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In the Supreme Court of the United States

OCTOBER TERM, 1975

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL., PETITIONERS

v.

ROOSEVELT F. PALMORE

C. L. SWAIN, SUPERINTENDENT, LORTON REFORMATORY, PETITIONER

v.

JASPER C. PRESSLEY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Constitutional and statutory provisions involved	2
Statement	3
1. *Palmore* v. *Superior Court*	3
2. *Pressley* v. *Swain*	7
3. The court of appeals' opinions	11
Summary of argument	15
Argument:	
I. Under 23 D.C. Code 110, the district court is prohibited from entertaining respondents' post-conviction applications for writs of habeas corpus	24
A. The language of the statute unambiguously deprives the United States District Courts of jurisdiction over collateral attacks upon Superior Court sentences	24
B. The legislative history of the Court Reform Act confirms that Congress meant what it said in Section 110(g)	28
1. Legislative history cannot justify disregard of unambiguous statutory language unless it reveals a Congressional purpose so	

Argument—Continued

	Page
plainly at variance with the language that to give meaning to the language would obviously defeat the will of Congress	28
2. The Congressional purpose is wholly consistent with the language of Section 110(g)	33
II. Section 110 does not violate the Constitution	55
A. The statute does not suspend the privilege of the writ of habeas corpus	56
1. Section 110, like 28 U.S.C. 2255, provides in the sentencing court a post-conviction remedy exactly commensurate with the writ of habeas corpus	57
2. The Suspension Clause does not prohibit Congress from restricting the availability of habeas corpus as a means of collaterally attacking a judgment of conviction entered by a court of competent jurisdiction	63
B. Section 110 does not deny equal protection to persons convicted of criminal offenses in the Superior Court	67
Conclusion	73
Addendum A	1a
Addendum B	21a

CITATIONS

Cases:

	Page
Accardi v. *Blackwell*, 412 F. 2d 911	25
Ahrens v. *Clark*, 335 U.S. 188	35
Allen v. *Grand Central Aircraft Co.*, 347 U.S. 535	43
Barrett v. *United States*, No. 74-5566, decided January 13, 1976	30
Brown v. *Allen*, 344 U.S. 443	49
Burke v. *United States*, 103 A. 2d 347	34
Cain v. *Markley*, 347 F. 2d 408	25
Caminetti v. *United States*, 242 U.S. 470	29
Cantu v. *Markley*, 353 F. 2d 696	25
Chandler v. *Roudebush*, No. 74-1599, decided June 1, 1976	55
Cheng Fan Kwok v. *Immigration and Naturalization Service*, 392 U.S. 206	27, 28
Cincinnati Street Railway Co. v. *Snell*, 193 U.S. 30	68
Crowell v. *Benson*, 285 U.S. 22	18, 31, 32
Duncan v. *Missouri*, 152 U.S. 377	68
Fay v. *Noia*, 372 U.S. 391	65
Frank v. *Mangum*, 237 U.S. 309	64
Galante, Application of, 437 F. 2d 1164	25
Gusik v. *Schilder*, 340 U.S. 128	46, 50
Hill v. *United States*, 368 U.S. 424	44, 47, 51, 57
Ingols v. *District of Columbia*, 103 A. 2d 879	34
Jay v. *Boyd*, 351 U.S. 345	18, 32
Mallett v. *North Carolina*, 181 U.S. 589	68
Missouri v. *Lewis*, 101 U.S. 22	67
McAffee v. *Clemmer*, 171 F. 2d 131	35
McCall v. *Swain*, 510 F. 2d 167	35
McDonald v. *Thompson*, 305 U.S. 263	27
Ozawa v. *United States*, 260 U.S. 178	31, 32

Cases—Continued Page

Palmore v. *United States*, 290 A. 2d 573 4
Palmore v. *United States*, 411 U.S. 389 *passim*
Platt v. *Union Pacific R.R. Co.*, 99 U.S. 48 27
S&E Contractors, Inc. v. *United States*, 406 U.S. 1 53
Sanders v. *United States*, 373 U.S. 1 44
Schneckloth v. *Bustamonte*, 412 U.S. 218 6, 65, 67
Thompson v. *District of Columbia*, 158 A. 2d 687 35
United States v. *American Trucking Associations*, 310 U.S. 534 29
United States v. *Hayman*, 342 U.S. 205 44, 47, 52, 57, 62, 64
United States v. *MacCollom*, No. 74-1487, decided June 10, 1976 66
United States v. *Missouri Pacific R. Co.*, 278 U.S. 269 28
United States v. *Morgan*, 346 U.S. 502 44
United States v. *Oregon*, 366 U.S. 643 28
United States v. *Rumely*, 345 U.S. 41 18, 31, 32
United States v. *Sullivan*, 332 U.S. 689 31-32, 33
United States v. *Zacks*, 375 U.S. 59 30
United States ex rel. Leguillou v. *Davis*, 212 F. 2d 681 48, 61
Watkins, Ex parte, 3 Pet. 193 64
Watkins, Ex parte, 7 Pet. 568 64
Yerger, Ex parte, 8 Wall. 85 64

Constitution and statutes:

United States Constitution:

Article I *passim*, 21a

Constitution and statutes—Continued Page

Article I, Section 9, Clause 2 (Suspension Clause) 6, 14, 21, 22, 55, 56, 61, 62, 63, 65, 66, 21a
Article III *passim*, 21a-22a
Article III, Section 1 5, 21a-22a
Fourth Amendment 5, 6, 7, 13, 58
Fifth Amendment (Due Process Clause) 6, 14, 55, 70, 22a
Sixth Amendment 9, 11

District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473 13, 16, 17, 19, 33, 35, 36, 40, 45, 51, 52
Habeas Corpus Act of 1679, 31 Car. II, c. 2, Section III 64
28 U.S.C. 1257 36
28 U.S.C. 1257(2) 4, 5
28 U.S.C. 1294 61
28 U.S.C. 2241, *et seq.* 9, 26, 66, 22a-23a
28 U.S.C. 2254 41, 42, 43, 49, 67, 68, 70, 24a-27a
28 U.S.C. 2254(b) 41
28 U.S.C. 2254(c) 49
28 U.S.C. 2255 *passim*, 27a-29a
11 D.C. Code 102 36
11 D.C. Code 301 36
11 D.C. Code (1967 ed.) 321 34
11 D.C. Code App. (Supp. II) 433(c) 59
11 D.C. Code (1967 ed.) 521 34
11 D.C. Code (1967 ed.) 521-523 34
11 D.C. Code 701 35
11 D.C. Code 702 36
11 D.C. Code 703(b) 36, 59
11 D.C. Code 704 59

Constitution and statutes—Continued

	Page
11 D.C. Code 901	35
11 D.C. Code 903	36
11 D.C. Code 904(b)	36, 59
11 D.C. Code 905	59
11 D.C. Code 923(b)	35-36
11 D.C. Code (1967 ed.) 963	34
11 D.C. Code 1501(a)	59
11 D.C. Code 1502	36, 59
11 D.C. Code 1521	59
16 D.C. Code (1967 ed.) 1901	35
22 D.C. Code 2201	7
22 D.C. Code 2206	7
22 D.C. Code 3204	3
23 D.C. Code 110	*passim*, 29a-30a
23 D.C. Code 110(a)	5, 17, 24, 29a
23 D.C. Code 110(g)	*passim*, 30a

Miscellaneous:

	Page
Annual Report of the Director of the Administrative Office of the United States Courts for the Fiscal Year Ended June 30, 1975	38
Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441 (1963)	65
116 Cong. Rec. 24342-24343 (1970)	60
Friendly, *Benchmarks* (1967)	32
Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142 (1970)	66
Gunther, *Cases and Materials on Constitutional Law* (9th ed. 1975)	31
Hart and Wechsler, *The Federal Courts and the Federal System* (2d ed. 1973)	65

Miscellaneous—Continued

	Page
Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417 (1899)	53
H.R. Rep. No. 91-907, 91st Cong., 2d Sess. (1970)	36-37, 38, 40, 42, 60
Mayers, *The Habeas Corpus Act of 1867: The Supreme Court as Legal Historian*, 33 U. Chi. L. Rev. 31 (1965)	65
Note, *Developments in the Law—Federal Habeas Corpus*, 83 Harv. L. Rev. 1038 (1970)	65
Oaks, *Legal History in the High Court—Habeas Corpus*, 64 Mich. L. Rev. 451 (1966)	64, 65
Omnibus Crime Bill of 1968, S. 917, 90th Cong., 2d Sess.	51
Rauh and Silbert, *Criminal Law and Procedure: D.C. Court Reform and Criminal Procedure Act of 1970*, 20 Am. U. L. Rev. 252 (1970)	45
S. 567, 93d Cong., 1st Sess. (1973)	51
S. Rep. No. 91-405, 91st Cong. 1st Sess. (1969)	36, 38, 41, 60
2A Sutherland, *Statutes and Statutory Construction* § 46.06 (4th ed. 1973)	27
Williams, *District of Columbia Court Reorganization, 1970*, 59 Geo. L. J. 477 (1971)	45
2 Wright, *Federal Practice and Procedure: Criminal*, § 591, p. 584 (1969)	44

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OPINIONS BELOW

The opinion of the court of appeals in *Palmore* v. *Superior Court of the District of Columbia, et al.* (Pet. App. A) is reported at 515 F.2d 1294. The

opinion of the court of appeals in *Pressley* v. *Swain* (Pet. App. D) is reported at 515 F.2d 1290. The opinion and orders of the district courts (Pet. Apps. C, F, and G) are unreported.

JURISDICTION

The *en banc* judgments of the court of appeals in *Palmore* (Pet. App. B) and in *Pressley* (Pet. App. E) were entered on July 9, 1975. On October 9 and 29, 1975, the Chief Justice granted extensions of time for filing a petition for writs of certiorari to and including December 6, 1975. The petition was filed on December 5, 1975, and was granted on February 23, 1976 (A. 116). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the United States District Courts have jurisdiction to entertain post-conviction applications for writs of habeas corpus on behalf of persons seeking release from custody under criminal sentences imposed by the Superior Court of the District of Columbia.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

23 D.C. Code 110(g) provides:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears

> that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

The comparable portion of 28 U.S.C. 2255 provides:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Other relevant constitutional and statutory provisions are set forth in Addendum B to this brief, *infra*, pp. 21a-30a.

STATEMENT

1. *Palmore* v. *Superior Court.*

After a non-jury trial in the Superior Court of the District of Columbia, respondent Palmore was convicted on March 31, 1971, of violating the felony provision of 22 D.C. Code 3204 by carrying a pistol without a license after previously having been convicted of a felony.[1] On April 27, 1971, he was sen-

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[1] As set out in this Court's opinion in *Palmore* v. *United States*, 411 U.S. 389, the facts giving rise to this conviction are as follows: In January 1971, two officers of the District

tenced to a term of imprisonment for two to six years. Execution of all but six months of the sentence was suspended, and respondent was placed on probation for six years.

Prior to trial, Palmore moved to dismiss the indictment on the ground that the Superior Court lacked jurisdiction to try him for a felony, alleging that only Article III judges with life tenure and salary protection could constitutionally exercise jurisdiction over the trial of a felony based on a law passed by Congress. He also moved to suppress the pistol seized from the car he was driving when stopped by the police, on the ground that the gun was discovered as the result of an unlawful search. The motions were denied, and Palmore was convicted. On appeal, the District of Columbia Court of Appeals rejected these claims and affirmed his conviction. *Palmore* v. *United States*, 290 A. 2d 573 (D.C. App.). Respondent then appealed to this Court pursuant to 28 U.S.C. 1257(2).

This Court concluded that since the District of Columbia "is constitutionally distinct from the States"

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of Columbia Metropolitan Police Department observed a moving automobile with license tags indicating that the vehicle was rented. The officers stopped the vehicle for a spot-check of the driver's license and car-rental agreement. Respondent Palmore, the driver of the vehicle, produced a rental agreement from the glove compartment of the car and explained why the car appeared to be, but was not, overdue. Meanwhile, one of the officers observed the hammer mechanism of a gun protruding from under the armrest in the front seat of the vehicle. Respondent was thereupon arrested and the gun seized.

(*Palmore* v. *United States*, 411 U.S. 389, 395), an appeal could not be taken under Section 1257(2). However, the Court treated Palmore's jurisdictional statement as a petition for a writ of certiorari and granted the petition, limited to the question whether Palmore was required to be tried by a court ordained and established in accordance with Article III, Section 1, of the Constitution (411 U.S. at 396-397). On that question, the Court held that "there is no support * * * in either constitutional text or in constitutional history and practice" for the view that criminal offenses under laws passed by Congress may not be prosecuted except in courts established pursuant to Article III (411 U.S. at 400).

Thereafter, on May 15, 1973, Palmore filed an application for a writ of habeas corpus in the United States District Court for the District of Columbia, naming as respondents the Superior Court of the District of Columbia, the Attorney General of the United States, and the Director of the District of Columbia Department of Corrections (A. 3-7).[2] The application raised the same Fourth Amendment claim that Palmore had pursued on direct appeal to the District of Columbia Court of Appeals.

On July 10, 1974, the district court dismissed the petition on the ground that Congress, by enacting 23 D.C. Code 110, had deprived it of jurisdiction (Pet. App. 55a-56a). The court relied upon the provision in 23 D.C. Code 110(a) that post-conviction collateral

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[2] Then, as now, respondent was on bond pending appeal.

attacks against convictions of the Superior Court of the District of Columbia may be made by motion in that court, and upon the express provision of Section 110(g) that an application for a writ of habeas corpus "shall not be entertained by * * * any Federal or State court if it appears that the applicant has failed to make a motion for relief under [Section 110] or that the Superior Court has denied him relief * * *."[3]

Palmore appealed to the United States Court of Appeals for the District of Columbia Circuit, contending (1) that Congress did not intend 23 D.C. Code 110(g) to bar the United States District Court from entertaining collateral attacks against convictions obtained in the Superior Court, and (2) that if Section 110(g) imposes such a jurisdictional limitation, it violates the Suspension Clause of the Constitution (Article I, Section 9, Clause 2) and is contrary to equal protection principles embodied in the Due Process Clause of the Fifth Amendment. These

[3] The district court also noted (Pet. App. 56a) that Palmore was "authorized by Title 23, D.C. Code § 110(a) to apply for relief by motion but has failed to do so" and that "there is no showing that the Superior Court has denied him relief or that the remedy by motion is inadequate and ineffective to test the legality of his detention * * *."

Accordingly, the district court found it unnecessary to reach the government's additional contention (A. 39-40), based upon Mr. Justice Powell's concurring opinion in *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 250-275, that claims predicated upon allegedly erroneous denials of motions to suppress evidence seized in violation of the Fourth Amendment should not be cognizable on collateral attack. That question is now pending before this Court in *Wolff* v. *Rice*, No. 74-1222, and *Stone* v. *Powell*, No. 74-1055.

contentions were based on the premise that persons convicted under a criminal statute passed by Congress are constitutionally entitled to collateral review of their convictions by Article III judges.

Over the dissent of one judge, the court of appeals, sitting *en banc*, reversed the judgment of the district court and remanded the case to that court for a decision on the merits of Palmore's Fourth Amendment claims (Pet. App. 1a-52a).

2. *Pressley* v. *Swain*.

Following a jury trial in the Superior Court of the District of Columbia, respondent Pressley was convicted on April 22, 1971, of grand larceny, in violation of 22 D.C. Code 2201, and of larceny from the District of Columbia government, in violation of 22 D.C. Code 2206. On October 1, 1971, he was sentenced to concurrent prison terms of 32 to 96 months on the grand larceny conviction and 20 to 60 months on the conviction for larceny from the District of Columbia government. On appeal, Pressley contended that inconsistencies between the testimony of two government witnesses concerning the physical appearance of the typewriter he was alleged to have stolen reflected perjury by one of them. On May 22, 1972, the District of Columbia Court of Appeals affirmed his conviction in an unpublished order, stating that "the record discloses no error affecting the substantial rights of appellant" (A. 109).

On June 5, 1972, Pressley filed an untimely *pro se* motion for a new trial in the Superior Court, claim-

ing ineffective assistance of counsel because his attorney had failed to move for suppression of the typewriter respondent allegedly had stolen. The court denied the motion. On March 2, 1973, the District of Columbia Court of Appeals, setting forth its reasons in some detail, affirmed the Superior Court's order denying the motion (A. 111-112).[4]

During the pendency of the appeal, Pressley filed a second *pro se* motion in the Superior Court, seeking to compel production of the grand jury voting records in his case. The trial court denied the motion on the ground that it lacked jurisdiction. On July 6, 1973, the District of Columbia Court of Appeals affirmed the Superior Court's denial of the motion, not on the jurisdictional ground on which the Superior Court had relied, but on the merits (A. 114-115).[5]

On May 11, 1973, Pressley, who was then serving his sentence at the Lorton Reformatory in Lorton, Virginia, filed a *pro se* petition for a writ of habeas

[4] Pressley's argument on appeal, as summarized by the Court of Appeals, was that "a suppression motion 'could have been based upon lack of probable cause for issuance of a search warrant and on improper execution of said warrant' because (1) the affidavit in support of the warrant was based upon information supplied by an informant whose credibility and reliability did not meet the test set forth in *Aguilar* v. *Texas*, 378 U.S. 114 (1963), and (2) the serial number of the typewriter seized differed from the serial number contained in the affidavit in support of the search warrant" (A. 111-112).

[5] Each of Pressley's three appeals to the District of Columbia Court of Appeals was fully briefed and argued by appointed counsel.

corpus under 28 U.S.C. 2241, *et seq.*, in the United States District Court for the District of Columbia (A. 62-69).[6] The petition was directed against C. L. Swain, the Superintendent of the Lorton Reformatory,[7] and alleged that Pressley had been denied the effective assistance of counsel guaranteed by the Sixth Amendment.[8] After a hearing on the question

[6] Respondent was released from confinement and placed on parole on January 1, 1974. His parole is due to expire on April 21, 1979.

[7] Neither the United States nor the Attorney General was named as a party. However, by long-standing agreement, when the complaint in a habeas corpus petition relates to the validity of an underlying conviction secured by the United States, the United States Attorney for the District of Columbia represents the Lorton Reformatory, or the District of Columbia Department of Corrections, or, as in the *Palmore* case, the Superior Court of the District of Columbia. Otherwise the respondents are represented by the Corporation Counsel for the District of Columbia. Accordingly, while the initial response to Pressley's habeas corpus petition was filed by the Office of the Corporation Counsel, all subsequent pleadings on behalf of Superintendent Swain were prepared and filed by the United States Attorney's Office.

[8] Pressley's Sixth Amendment claim raised issues in addition to that raised in his first motion for a new trial in the Superior Court (see note 4, *supra*). He alleged that he was denied the effective assistance of counsel because his trial counsel had failed (1) to move to suppress the typewriter allegedly stolen by respondent, (2) to introduce expert testimony regarding the value of the typewriter at the time of the theft, (3) to arrange for a fingerprint expert to determine whether fingerprints could have been taken from the typewriter, (4) to object on *voir dire* when a prospective juror rose in open court and stated that she had seen petitioner on a previous occasion, (5) to object to the indictment when it appeared on the face of two separate indictments that the

of the court's jurisdiction to entertain the petition, the district court entered an order dismissing the petition for want of jurisdiction "by virtue of 23 D.C. Code § 110(g)" (Pet. App. 66a). Pressley appealed.

On October 30, 1974, the United States Court of Appeals for the District of Columbia Circuit, *sua sponte*, remanded the record to the district court to clarify its order of dismissal (see Pet. App. 59a).[9] The district court thereafter "respectfully advise[d] that on the papers then before it, it appeared that appellant had not adequately exhausted his remedies in the local court system. The Court made no determination as to the constitutionality of 23 D.C. Code § 110" (Pet. App. 67a). The district court concluded only that "[i]t was not apparent that the suppression issue had ever been analyzed and there were aspects of the adequacy of counsel not passed upon at the local level. The writ should have been initially filed in the local courts" (*id.* at 68a-69a). The district

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signatures of the United States Attorney for the District of Columbia were patently different, and (6) to make an effort to impeach a witness whose testimony regarding the presence of spray paint on the typewriter was allegedly in conflict with the testimony of other government witnesses (A. 64-67).

[9] The court of appeals instructed the district judge to "indicate whether, in ruling that he was without jurisdiction to entertain the petition for a writ of habeas corpus under 23 D.C. Code § 110(g), he considered the applicant as one who had exhausted his remedies in the local court system, or whether he ruled only that he was without jurisdiction because the applicant had not first sought a writ of habeas corpus in Superior Court as required by 16 D.C. Code § 1901 (c) and 23 D.C. Code § 110(a)" (Pet. App. 59a).

court "did not feel the question of the ultimate effect of 23 D.C. Code § 110 upon the viability of a further writ of habeas corpus in the District Court was ripe for decision in this case" (*id.* at 69a).

The court of appeals, again sitting *en banc* and again over the dissent of one judge, reversed the judgment of the district court and remanded the case for a decision on the merits of Pressley's Sixth Amendment claims (Pet. App. 57a-63a).

3. The Court of Appeals' Opinions.

a. *Palmore.* The court of appeals held in *Palmore* that 23 D.C. Code 110(g) "is merely an exhaustion of remedies requirement" (Pet. App. 5a) that ordinarily compels initial submission of post-conviction claims to the local courts but does not otherwise restrict the availability of "post-conviction relief in the United States District Court for the District of Columbia for an individual convicted in Superior Court" (*id.* at 4a).

Invoking the maxim that "statutes should be interpreted to avoid difficult constitutional questions" (*id.* at 5a), the majority concluded that the interpretation suggested by "the face of the statute" would "force us directly to confront serious and significant constitutional questions" (*ibid.*)—namely, "whether section 110(g) constitutes an improper suspension of the Great Writ and whether by singling out those convicted of local District of Columbia crimes for eliminating access to the article III courts Congress has violated the concept of equal protection of law"

(*id.* at 14a). Unwilling to resolve "these questions of first impression" without assurance that "Congress clearly intended the construction which raises" them (*id.* at 27a), and unwilling to infer such intent from the language of Section 110(g) itself, the court "reject[ed] the Government's 'clear meaning' approach" (*id.* at 22a) and inquired "beyond the face of the statute to its legislative history" (*id.* at 5a).

The majority's analysis of the legislative history was predicated upon its view that "[a]cceptance of the Government's construction would result in significant changes in habeas corpus jurisdiction traditionally exercised by the [Article III] federal courts" (*ibid.*). The court therefore framed the question as whether the legislative history reflected an awareness on the part of Congress "of section 110's considerable jurisdictional impact or its possible unconstitutionality" (*id.* at 38a). Finding "no debate or discussion" (*ibid.*) reflecting such an awareness, the court concluded that "[t]he most logical inference which may be drawn from this silence is that Congress never intended section 110 to affect the district court's jurisdiction" (*id.* at 41a).

Section 110 was designed, in the court of appeals' view, merely to provide "a statutory remedy for post-conviction relief in the new court system" (*id.* at 30a) so that the local courts would no longer need "to rely * * * upon their inherent authority" to entertain motions for post-conviction relief (*ibid.*). Perceiving the resulting statute as no more than a codification of the local courts' pre-existing "common law power"

(*ibid.*), the court of appeals could find no basis for inferring that Congress meant simultaneously to restrict the habeas jurisdiction of the Article III federal courts.

The majority believed that its analysis was consistent with the broad purpose of the Court Reform Act to establish "a dual court system analogous to the relationship between the federal and state courts" (*id.* at 33a). "The interpretation of section 110 most harmonious with this federal-state analogy," according to the court, is one that "would allow the district court to entertain petitions for collateral review in the same manner as district courts do for the fifty states" (*id.* at 35a).

Finally, applying its exhaustion-of-remedies construction of Section 110(g) to the facts in *Palmore*, the court ruled that, since Palmore had tendered his Fourth Amendment claim to the Superior Court in a pre-trial motion to suppress and to the District of Columbia Court of Appeals on direct appeal, and since "those courts fully considered and rejected the claim," Palmore had "sufficiently exhausted his local remedies despite not having made a motion [in the Superior Court] under section 110" (*id.* at 47a).

Judge Robb dissented. Since, in his view, the statute's "plain language means exactly what it says"—namely, that the United States District Courts are precluded from entertaining motions for post-conviction relief on behalf of persons in custody under Superior Court sentences even if remedies in the local court system have been exhausted—Judge Robb "re-

ject[ed] the premise upon which the majority avoids what it considers to be difficult constitutional questions" (*id.* at 49a). Turning to those questions, Judge Robb concluded that the statute violates neither the Suspension Clause nor the equal protection principles of the Fifth Amendment's Due Process Clause.

First, since "the relief available in the Superior Court under 23 D.C. Code § 110 * * * is the equivalent of that available in a federal court under 28 U.S.C. § 2255," and since "the Supreme Court has held that the scope of 28 U.S.C. § 2255 is 'exactly commensurate' with the scope of federal habeas corpus," it followed, in Judge Robb's view, that "[t]he relief defined in section 110 * * * is the equivalent of federal habeas corpus relief" (Pet. App. 50a). The Suspension Clause question therefore "is reduced to the difference in the tenure and salary protections accorded District Court and Superior Court judges" (*ibid.*). That question Judge Robb found answered in principle by this Court's decision in the first *Palmore* case. "If without the dilution of his constitutional rights a man may be tried and sentenced to the penitentiary by an Article I judge of the Superior Court, I see no reason why he may not be limited to that same court when applying for collateral post-conviction relief" (*id.* at 51a).

On the equal protection issue, Judge Robb concluded in a similar vein that, if "there is no invidious discrimination when a person in the District of Columbia is tried in an Article I court for a

violation of an act of Congress, applicable only within the District," then "it is not a denial of equal protection when that person is required to present his application for collateral relief to an Article I District of Columbia court" (*id.* at 51a-52a).

b. *Pressley.* The court of appeals in *Pressley* relied on its holding in *Palmore* that Section 110 (g) "operates only as an exhaustion of remedies provision" (Pet. App. 61a). It held that Pressley had "exhausted his local remedies by first pursuing his claim through a motion under section 110" (*id.* at 62a) and that he was therefore entitled to an adjudication of the constitutional claims presented in his habeas corpus petition in the district court.[10]

Judge Robb dissented for the reasons stated in his dissenting opinion in *Palmore* (*id.* at 63a).

SUMMARY OF ARGUMENT

It is our submission that the district court lacks jurisdiction to entertain respondents' applications for writs of habeas corpus. In part I of this brief, we show that the language and legislative history of 23 D.C. Code 110 compel the conclusion that, except in extraordinary circumstances not present here, the statute prohibits federal district courts from enter-

[10] Because of the importance of the statutory issue in this case, we did not present in our petition for a writ of certiorari the essentially factual question whether, assuming exhaustion is all that Section 110(g) requires, Pressley's motions in the Superior Court adequately exhausted his remedies in that court with respect to all the claims raised in his petition for a writ of habeas corpus.

taining collateral attacks upon Superior Court sentences. In part II, we address the constitutional questions that the court of appeals declined to resolve. We show that Section 110 neither suspends the privilege of the writ of habeas corpus nor denies to persons convicted in the Superior Court of the District of Columbia the equal protection of the laws.

I

Congress enacted the District of Columbia Court Reform and Criminal Procedure Act of 1970 in response to the mounting crime rate in the District of Columbia, in order to provide swifter and surer justice by eliminating the backlog of cases in the United States District Court. Exercising its powers under Article I of the Constitution, Congress established a new local court system composed of a trial court of general jurisdiction (the Superior Court of the District of Columbia) and an appellate court (the District of Columbia Court of Appeals). The Act transferred jurisdiction over all exclusively local matters—including all criminal prosecutions under the District of Columbia Code—from the United States District Court to the Superior Court. Congress anticipated that both the enlarged and upgraded local court system and the significantly less burdened Article III court system would as a result of the reforms be equipped to administer prompt criminal justice in the cases within their respective jurisdictions. In *Palmore* v. *United States*, 411 U.S. 389, this Court upheld the constitutionality of the Article I court system, concluding that "Congress

was not required to provide an Art. III court for the trial of criminal cases arising under its laws applicable only within the District of Columbia" (411 U.S. at 410).

At issue in this case is the meaning of one subsection of the Court Reform Act. Congress provided in 23 D.C. Code 110(a) that a person convicted of a criminal offense in the Superior Court may challenge his conviction collaterally by filing a motion in the Superior Court to vacate, set aside, or correct his sentence. Section 110(g)—the provision in question here—specifies that an application for a writ of habeas corpus on behalf of a prisoner authorized to apply for relief by motion under Section 110(a) "shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief * * *."

The court of appeals held that this is merely an exhaustion of remedies provision, requiring prisoners to seek relief initially in the Superior Court but not otherwise affecting the habeas corpus jurisdiction of the United States District Courts. That interpretation, we submit, cannot be squared with either the language or the legislative history of Section 110(g).

1. The language is unambiguous. It deprives the United States District Courts of jurisdiction to entertain a post-conviction application for a writ of habeas corpus regardless of whether the applicant

has already exhausted his Superior Court remedy. The prohibition applies if it appears *either* (1) "that the applicant has failed to make a motion" under Section 110 *or* (2) "that the Superior Court has denied him relief." By concluding that Section 110(g) is merely an exhaustion of remedies provision, the court of appeals gave effect only to the first clause. The court attributed no meaning whatever to the second clause; it simply read that clause out of the statute.

2. The court thought it was appropriate to take that extraordinary step in order to avoid resolving the serious constitutional questions that it believed would be presented if the statutory language were given effect. Although this Court's decisions reflect a preference for construing a statute, if "fairly possible" (*Crowell* v. *Benson*, 285 U.S. 22, 62), to avoid a serious constitutional question, the principle applies only "in the choice of fair alternatives" (*United States* v. *Rumely*, 345 U.S. 41, 45) and "does not authorize a departure from clear meaning" (*Jay* v. *Boyd*, 351 U.S. 345, 357, n. 21). In order for judicial nullification of the second clause of Section 110(g) to be viewed as a "fair alternative" to giving effect to the clause, the legislative history would have to reveal a Congressional purpose so plainly at variance with the words of the statute that to give meaning to those words would obviously negate the will of Congress. Mere silence in the legislative history could not justify a refusal to give effect to a portion of the Congressional enactment that is plain in its meaning, that is not inconsistent with other provisions of the legislation or with the purposes of the legislation, and that does not produce an absurd result.

3. Far from justifying the court of appeals' nullification of the statutory clause, the legislative history confirms that Congress meant precisely what it said in Section 110(g). Congress sought in the Court Reform Act to liberate the Article III court system from the crippling burdens of administering local criminal justice in cases involving D.C. Code offenses, so that it could devote its resources to achieving swift and sure justice in cases arising under nationally applicable criminal laws. The solution was to provide for a "total transfer" of local criminal justice responsibilities from the Article III courts to the newly created Article I court system. By directing all post-conviction attacks on Superior Court sentences exclusively to the Superior Court itself, Section 110 serves the important function of insulating the Article III court system from the drain on its resources that would result from a collateral involvement in the local criminal litigation that the Act assigned to the Article I court system.

The language of Section 110, including subsection (g), is almost identical to that of 28 U.S.C. 2255, and the legislative history of Section 110 reveals that the resemblance was intentional. It is therefore significant that Section 2255—which provides that collateral attacks on sentences imposed by Article III courts and Article I territorial courts

must be brought by motion in the sentencing court—has never been viewed as merely an exhaustion of remedies provision but rather has been seen as providing the exclusive post-conviction remedy for prisoners authorized to invoke it. Indeed, as if to emphasize its parallel intention in Section 110(g), Congress added a phrase to the transplanted language of Section 2255, specifying in Section 110(g) that applications for writs of habeas corpus on behalf of persons authorized to seek relief by motion in the Superior Court "shall not be entertained *by the Superior Court or by any Federal or State court*" (emphasis added).

The court of appeals thought that if Congress had understood the provisions of Section 110 to preclude Superior Court convicts from access to an Article III tribunal for post-conviction relief, the measure would have provoked "considerable debate and controversy" (Pet. App. 38a); the court inferred from the absence of such debate that Congress must not have meant what it said in the statute. But Section 110 simply adopted the familiar language of 28 U.S.C. 2255 and made the post-conviction procedures of that statute applicable to the new local court system. Since Section 2255 itself prohibits Article III district courts from entertaining post-conviction habeas corpus applications on behalf of persons convicted in the Article I territorial courts, and since no court had held that aspect of Section 2255 unconstitutional, there is no reason

to suppose that Congress would have perceived the parallel provisions of Section 110 as raising controversial questions of policy or constitutionality.

II

Section 110 neither suspends the privilege of the writ of habeas corpus nor denies to Superior Court convicts the equal protection of the laws.

1. The post-conviction remedy provided by Section 110 is exactly commensurate, in terms of the nature and scope of the available relief, with the writ of habeas corpus. Respondents' Suspension Clause argument rests, therefore, on the premise that the privilege of the writ of habeas corpus is suspended if a person may not apply for the writ to a judge having the tenure and salary protections afforded by Article III of the Constitution. But nothing in the text of the Constitution or in the decisions of this Court supports the contention that Congress must provide an Article III forum for the adjudication of post-conviction collateral challenges to sentences imposed by a federally constituted court established pursuant to Article I.

On the contrary, the constitutional history reveals that the Suspension Clause was intended to prohibit a complete denial of any judicial remedy to test the legality of detention. The framers left to Congress the authority to prescribe the procedures for issuance of the writ and to determine what judicial tribunals would be empowered to entertain applications for the writ.

Congress chose here to confine applications for habeas-type post-conviction relief to the Superior Court, in which the sentence was imposed. There is no reason to assume that the judges of the Superior Court, appointed by the President and confirmed by the Senate, with 15-year terms and salaries keyed to those of United States District Judges, are institutionally less able or less likely than are Article III judges to give full and fair consideration to federal constitutional claims.

Moreover, the history of the Constitution demonstrates that the framers did not understand the privilege of the writ of habeas corpus to extend to collateral attacks on criminal convictions entered by courts of competent jurisdiction. Congress could, therefore, abolish post-conviction federal habeas corpus procedures without violating the Suspension Clause. Certainly Section 110—which merely directs such post-conviction challenges to the Article I sentencing court without restricting at all the scope of the available remedy—does not amount to a suspension of the privilege of the writ within the meaning of the constitutional prohibition.

2. Respondents' equal protection argument, like their Suspension Clause argument, is founded on the tenure and salary differences between Article III and Article I federal judges. But the guarantee of equal protection does not encompass a right to litigate claims in any particular court, so long as equal laws prevail in the available tribunals. The different constitutional status of the Superior Court and the

United States District Courts affects neither the scope of the available post-conviction remedy nor the source of the applicable law.

All persons convicted in an Article III or an Article I federal court have the same post-conviction remedy by motion in the court that imposed the sentence. Persons convicted in a state court have a similar post-conviction remedy in an appropriate federal district court. That state prisoners have access to an Article III tribunal, while Superior Court and territorial court convicts do not, simply reflects a permissible Congressional judgment that federal control over the Article I courts and over the nature and scope of the post-conviction remedy available in those courts makes it unnecessary to duplicate for District of Columbia and territorial convicts the system of federal post-conviction review already provided in the sentencing court. Since Congress has provided only one avenue of post-conviction relief in the federal courts for all other categories of prisoners, equal protection concepts do not require it to provide two for D.C. Code violators.

Finally, even if Section 110 can be said to disfavor Superior Court convicts, the classification is a reasonable means to the important ends of preserving the capacity of the federal district court to administer prompt criminal justice in cases arising under the nationally applicable laws of Congress and promoting the finality of federal judgments by avoiding the duplication of federal post-conviction remedies.

ARGUMENT

I

UNDER 23 D.C. CODE 110, THE DISTRICT COURT IS PROHIBITED FROM ENTERTAINING RESPONDENTS' POST-CONVICTION APPLICATIONS FOR WRITS OF HABEAS CORPUS

A. The Language of the Statute Unambiguously Deprives the United States District Courts of Jurisdiction Over Collateral Attacks Upon Superior Court Sentences

23 D.C. Code 110 [11] grants to the Superior Court of the District of Columbia the general power to entertain collateral attacks upon its own sentences (23 D.C. Code 110(a)). The section provides for appeal only to the District of Columbia Court of Appeals (23 D.C. Code 110(f)), with ultimate review available in this Court under 28 U.S.C. 1257. The unambiguous language of the statute makes the Section 110 motion in Superior Court the exclusive remedy for collaterally challenging a Superior Court sentence. Congress provided in Section 110(g):

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

[11] Section 110 is set forth in its entirety in Addendum B to this brief *infra*, pp. 29a-30a.

By the terms of Section 110(g), no federal or state court may entertain a habeas corpus petition challenging a Superior Court sentence if the applicant (1) has failed to make a motion for relief in the Superior Court under Section 110, *or* (2) has made such a motion but has been denied relief by the Superior Court. The only exception to that comprehensive proscription is when it appears that the remedy by motion under Section 110 is "inadequate or ineffective" to test the legality of the applicant's detention.[12]

Section 110(g) thus establishes two independent categories of persons whose applications for habeas corpus may not be entertained by any court—those who have failed to seek relief in Superior Court

[12] A statutory collateral attack remedy is not "inadequate or ineffective" merely because the sentencing court has refused relief or because the decisional law in the court in which the defendant was convicted and sentenced is less favorable to him than in the court in which habeas corpus would lie. The remedy is "inadequate or ineffective" only if it can be shown that some limitation on scope or procedure prevented the collateral attack proceeding from providing a full hearing and adjudication. See *e.g.*, *Application of Galante*, 437 F. 2d 1164, 1165 (C.A. 3); *Accardi* v. *Blackwell*, 412 F. 2d 911, 913-914 (C.A. 5); *Cantu* v. *Markley*, 353 F. 2d 696, 698 (C.A. 7); *Cain* v. *Markley*, 347 F. 2d 408, 410 (C.A. 7).

Apart from respondents' constitutional objections to the status of the Superior Court, there is no suggestion that that court fails to provide an adequate and effective forum to adjudicate respondents' collateral attacks on their convictions.

and those who have been denied relief by the Superior Court. These two categories encompass all potential habeas corpus applicants who are in custody under sentences imposed by the Superior Court.[13] It therefore follows, under the terms of Section 110 (g), that United States District Courts are without jurisdiction to entertain habeas corpus applications on behalf of persons challenging sentences imposed by the Superior Court of the District of Columbia.

Despite this clear statutory language, the court of appeals concluded that 23 D.C. Code 110(g) is merely "an exhaustion of remedies statute," requiring only the "initial submission of claims to the local courts and marking * * * the terminal point for proceedings in the local court system" (Pet. App. 45a). Once an applicant has exhausted his remedies in the Superior Court under Section 110, he is entitled, according to the court of appeals, to file an application for a writ of habeas corpus in the United States District Court under 28 U.S.C. 2241, *et seq.* (see Pet. App. 46a, 61a).

That result gives effect to only one of the two clauses of Section 110(g)'s jurisdictional proscription ("shall not be entertained * * * if it appears that the applicant has failed to make a motion for relief under this section"). While that clause standing

[13] The only other possible category of persons sentenced by the Superior Court would include those who have sought and obtained relief under Section 110. Since the persons in that category have by definition already obtained the relief they sought, they would not be potential habeas corpus applicants.

alone would preclude relief in the United States District Courts in the absence of an exhaustion of remedies in the Superior Court, the court of appeals' construction of the statute completely ignores the second, wholly independent clause of Section 110(g) ("shall not be entertained * * * if it appears * * * that the Superior Court has denied him relief"). The second clause plainly deprives the United States District Courts of jurisdiction to award post-conviction relief to prisoners convicted in the Superior Court who have exhausted their remedies there but have been denied relief.

The court of appeals did not attribute to the second clause a meaning different from the one that we believe is inescapable. It simply read the statute as if the clause did not exist. That extraordinary departure from sound principles of statutory construction [14] is particularly unwarranted in this case, because "[j]urisdictional statutes are to be construed 'with precision and with fidelity to the terms by which Congress has expressed its wishes.'" *Palmore* v. *United States*, 411 U.S. 389, 396, quoting from *Cheng Fan Kwok* v. *Immigration and Naturalization Service*, 392 U.S. 206, 212. The special care that

[14] Because "Congress is not presumed to have used words for no purpose" (*Platt* v. *Union Pacific R.R. Co.*, 99 U.S. 48, 58), it has long been "the rule that all words of a statute are to be taken into account and given effect if that can be done consistently with the plainly disclosed legislative intent" (*McDonald* v. *Thompson*, 305 U.S. 263, 266). See generally 2A Sutherland, *Statutes and Statutory Construction* § 46.06 (4th ed. 1973).

courts exercise in construing jurisdictional statutes derives at least in part from the understandable concern that it would be especially inappropriate for the judiciary to substitute its judgment for that of the legislature in a matter concerning the power of the courts.

The court of appeals here, however, has effectively obliterated from Section 110(g) an express limitation on the jurisdiction of the United States District Courts. Whatever other arguments may be advanced in support of that result, it cannot fairly be said to reflect "fidelity to the terms by which Congress has expressed its wishes" (*Cheng Fan Kwok*, *supra*, 392 U.S. at 212).

B. The Legislative History Of The Court Reform Act Confirms That Congress Meant What It Said In Section 110(g)

1. *Legislative history cannot justify disregard of unambiguous statutory language unless it reveals a Congressional purpose so plainly at variance with the language that to give meaning to the language would obviously defeat the will of Congress*

a. Since "the provisions of [Section 110(g)] are clear and unequivocal on their face," there should be "no need to resort to the legislative history of the Act" (*United States* v. *Oregon*, 366 U.S. 643, 648). "It is elementary that where no ambiguity exists there is no room for construction" (*United States* v. *Missouri Pacific R. Co.*, 278 U.S. 269, 277). See

also *Caminetti* v. *United States*, 242 U.S. 470, 485. We recognize, however, that "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination'" (*United States* v. *American Trucking Associations*, 310 U.S. 534, 543-544; footnotes omitted).

While we therefore have no quarrel with the court of appeals' willingness to look "beyond the face of the statute to its legislative history" (Pet. App. 5a), we submit that the court framed the inquiry improperly. Believing that it would be "force[d] * * * directly to confront serious and significant constitutional questions" (*ibid.*) if the second clause of Section 110(g) were to be given effect, and believing also that "statutes should be interpreted to avoid difficult constitutional questions" (*ibid.*), the majority conceived of its legislative history inquiry as one designed to determine whether "Congress clearly intended" (*id.* at 27a) the result that follows unavoidably from the statutory language itself.

The court's analysis accordingly proceeded on the assumption that only strong affirmative indications in the legislative history that Congress knowingly and intentionally sought to deprive the federal district courts of post-conviction habeas corpus jurisdiction would justify giving that effect to the words of Section 110(g). Silence or ambiguity was perceived by the court as weighing heavily in favor of an interpretation that drains all meaning from one of the two

limiting clauses in the section (see, *e.g.*, Pet. App. 5a, 28a, 31a, 35a, 38a, 40a, 41a, 42a-45a).

In our view, the pertinent legislative history, correctly understood, satisfies even the court of appeals' erroneous standard, for it does in fact reflect a Congressional intention to achieve the statute's jurisdictional effect (see pp. 33-55, *infra*). But the unprecedented approach taken by the court of appeals turns the usual canons of statutory construction on their head. It should ordinarily be presumed that "Congress knew the significance and meaning of the language it employed" (*Barrett* v. *United States*, No. 74-5566, decided January 13, 1976, slip op. 5) and intended that language to be given full effect. Where, as here, the statutory language is unambiguous, silence in the legislative history is no basis for inferring that Congress did not mean what it said.

The proper inquiry in this case, therefore, is not whether the pertinent extrinsic materials demonstrate that "Congress clearly intended" (Pet. App. 27a) the full jurisdictional consequences of Section 110 (g), but rather whether the legislative history is so manifestly inconsistent with the legislation itself as to warrant the extraordinary conclusion that giving effect to the second clause of that section would negate rather than promote the Congressional will. See *United States* v. *Zacks*, 375 U.S. 59, 69. Unless it can be said that the plain meaning of the statute "leads to an unreasonable result plainly at variance with the policy of the legislation as a whole," the words of the statute should be given "their natural

significance" (*Ozawa* v. *United States*, 260 U.S. 178, 194).

b. The rule is not substantially different for cases in which the constitutionality of a statute is challenged. "When the validity of an act of the Congress is drawn in question, and * * * a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is *fairly possible* by which the question may be avoided" (*Crowell* v. *Benson*, 285 U.S. 22, 62; emphasis added). This "principle of constitutional adjudication * * * makes it decisive *in the choice of fair alternatives* that one construction may raise serious constitutional questions avoided by another" (*United States* v. *Rumely*, 345 U.S. 41, 45; emphasis added).

The court of appeals invoked this precept but overlooked its fundamental limitations, highlighted by the italicized phrases. With those limitations, the rule is a proper guide to legislative intent, since Congress may ordinarily be presumed to have intended a result that avoids constitutional difficulty. Divorced from those limitations, however, the rule would permit nullification of a legislative judgment on the strength of a judicial determination, not that the statute is unconstitutional, but merely that it raises constitutional questions. See Gunther, *Cases and Materials on Constitutional Law*, p. 1604 (9th ed. 1975).

That is why this Court has admonished that "[a] restrictive interpretation should not be given a statute merely because * * * giving effect to the express

language employed by Congress might require a court to face a constitutional question" (*United States* v. *Sullivan*, 332 U.S. 689, 693). The rule that "constructions giving rise to doubtful constitutional validity should be avoided * * * does not authorize a departure from clear meaning" (*Jay* v. *Boyd*, 351 U.S. 345, 357, n. 21). Indeed, "a distortion of the congressional purpose" is unjustified "even if the clearly correct purpose * * * leads inevitably to a holding of constitutional invalidity" (*United States* v. *Sullivan*, *supra*, 332 U.S. at 693). See Friendly, *Benchmarks*, pp. 210-212 (1967).

The court of appeals failed to heed these admonitions. It made no pretense of choosing between two "fairly possible" constructions (*Crowell* v. *Benson*, *supra*, 285 U.S. at 62) of the second clause of Section 110(g); nowhere in the court's opinion does there appear any suggestion of what meaning should be attached to that clause. The court of appeals simply read the clause out of the statute.

In order to view that result as reflecting a "choice of fair alternatives" (*United States* v. *Rumely*, *supra*, 345 U.S. at 45)—that is, in order for judicial nullification of a material statutory clause to be characterized as a "fair alternative" to giving effect to the clause—one would have to find in the legislative history compelling evidence that the pertinent statutory words, if given "their natural significance" (*Ozawa* v. *United States*, *supra*, 260 U.S. at 194), would wholly defeat the Congressional intent.

The court of appeals, by demanding, instead, evidence that "Congress clearly intended" (Pet. App. 27a) that the language of Section 110 be given its natural meaning, drew erroneous inferences from the legislative history and reached a conclusion that represents a "distortion of the congressional purpose" (*United States* v. *Sullivan*, *supra*, 332 U.S. at 693). The court's "construction" of the second clause of Section 110(g) amounts, in practical effect, to a declaration of unconstitutionality without a reasoned resolution of the constitutional issues.

If the court of appeals had made the proper inquiry into the Act's legislative history, and had fully appreciated the limitations upon the doctrine of avoiding unnecessary constitutional adjudication, it would have had no choice but to confront and decide respondents' constitutional contentions.[15]

2. *The Congressional purpose is wholly consistent with the language of Section 110(g)*

a. In the District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473, Congress restructured the judicial system of the District of Columbia. Prior to 1970, the District's municipal court system consisted of one trial court of limited civil and criminal jurisdiction (the District of Columbia Court of General Sessions); two trial courts of special jurisdiction (the Juvenile Court of the District of Columbia and the District of Columbia

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[15] We address those contentions later in this brief (pp. 55-72, *infra*).

Tax Court); and one appellate court (the District of Columbia Court of Appeals), whose judgments were subject to review by the United States Court of Appeals for the District of Columbia Circuit. 11 D.C. Code (1967 ed.) 321, 701, 901, 1501. The criminal jurisdiction of the Court of General Sessions was restricted to misdemeanors and petty offenses. 11 D.C. Code (1967 ed.) 963.

The United States District Court for the District of Columbia, in addition to the jurisdiction it had in common with other United States District Courts, had concurrent jurisdiction over most of the criminal and civil matters cognizable in the local courts. 11 D.C. Code (1967 ed.) 521-523, 963. It had exclusive jurisdiction over felony prosecutions for violations of the District of Columbia Code. 11 D.C. Code (1967 ed.) 521, 963. Appeals from such convictions were taken to the United States Court of Appeals for the District of Columbia Circuit, and that court accordingly played the major role in developing the criminal jurisprudence for the District of Columbia.

Collateral attacks against convictions obtained in the Court of General Sessions and the Juvenile Court were brought by motion in those courts under the authority of decisions holding that those courts had "inherent power" to grant collateral relief. *Burke* v. *United States*, 103 A. 2d 347 (D.C. App.); *Ingols* v. *District of Columbia*, 103 A. 2d 879 (D.C. App.). All persons confined "within the District" were authorized to apply to the United States District Court for the District of Columbia for writs of habeas

corpus. 16 D.C. Code (1967 ed.) 1901. But, as a practical matter, this provision applied primarily to persons detained prior to trial or awaiting sentence, since most persons convicted and sentenced in the District of Columbia were then, as they are now, confined in correctional facilities outside the territorial limits of the District. Under *Ahrens* v. *Clark*, 335 U.S. 188, the District's courts had held that they had no power to issue a writ of habeas corpus unless both the prisoner and his custodian were within the territorial jurisdiction of the District. *McAffee* v. *Clemmer*, 171 F. 2d 131, 131-132 (C.A. D.C.); *Thompson* v. *District of Columbia*, 158 A. 2d 687 (D.C. App.). See also *McCall* v. *Swain*, 510 F. 2d 167, 173-175 (C.A. D.C.).

In the 1970 Court Reform Act, "Congress reorganized the court system in the District of Columbia and established one set of courts in the District with Art. III characteristics and devoted to matters of national concern. It also created a wholly separate court system designed primarily to concern itself with local law and to serve as a local court system for a large metropolitan area." *Palmore* v. *United States*, 411 U.S. 389, 408.

The new local court system consists of a trial court of general jurisdiction (the Superior Court of the District of Columbia) and an appellate court (the District of Columbia Court of Appeals). 11 D.C. Code 701, 901. The Superior Court has jurisdiction "of any criminal case under any law applicable exclusively to the District of Columbia" (11 D.C. Code

923(b)). The former jurisdiction of the United States Court of Appeals for the District of Columbia Circuit to review the judgments of the District of Columbia Court of Appeals was eliminated (see 11 D.C. Code 301). The District of Columbia Court of Appeals was denominated the "highest court of the District of Columbia," and its judgments were made reviewable only by this Court under 28 U.S.C. 1257 (11 D.C. Code 102).[16]

The primary reason for enacting the Court Reform Act was that "Congress had concluded that there was a crisis in the judicial system of the District of Columbia, that case loads had become unmanageable, and that neither those matters of national concern nor those of strictly local cognizance were being promptly tried and disposed of by the existing court system" (*Palmore* v. *United States*, *supra*, 411 U.S. at 408). Congress found that the "alarming and unremitting increases" in crime in the District could "be traced in significant part to the inadequacy of the District's judicial machinery and to critical defects here in the administration of criminal justice." S. Rep. No. 91-405, 91st Cong., 1st Sess. 2 (1969). Believing that "swift and sure justice" would help relieve "the soaring crime rate" and that "reorganization of the court system * * * is a step toward

[16] The Act also upgraded and expanded the local court system. The number of judges was increased, their tenure was lengthened from 10 to 15 years, and their salaries were raised. 11 D.C. Code 702, 703, 903, 904, 1502. The salary and tenure provisions of the Court Reform Act are discussed in a later section of this brief, *infra*, pp. 59-60.

swifter and surer justice in the District," Congress determined to provide for a "total transfer of local jurisdiction" from the United States District Court and United States Court of Appeals to the Superior Court and the District of Columbia Court of Appeals. H.R. Rep. No. 91-907, 91st Cong., 2d Sess. 25, 33 (1970).

The theory of the reorganization was described by this Court in the first *Palmore* case (411 U.S. at 408-409):

> The remedy in part, was to relieve the regular Art. III courts, that is, the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, from the smothering responsibility for the great mass of litigation, civil and criminal, that inevitably characterizes the court system in a major city and to confine the work of those courts to that which, for the most part, they were designed to do, namely, to try cases arising under the Constitution and the nationally applicable laws of Congress. The other part of the remedy, equally essential, was to establish an entirely new court system with functions essentially similar to those of the local courts found in the 50 States of the Union with responsibility for trying and deciding those distinctively local controversies that arise under local law, including local criminal laws having little, if any, impact beyond the local jurisdiction.

By expanding and upgrading the local court system while relieving the Article III courts of their respon-

sibility for the administration of criminal justice with respect to D.C. Code offenses, Congress sought to assure speedier justice in both court systems. The enlarged Superior Court was equipped by Congress to administer swift justice to persons accused of D.C. Code crimes; the United States District Court, freed of responsibilities with respect to local criminal matters, was expected to have the resources to administer speedy justice to persons accused of U.S. Code offenses.[17]

b. Section 110 serves an important function in accomplishing the central purposes of the Court Reform Act. In order to free the Article III court system from the crushing burdens of criminal litigation with respect to D.C. Code offenses, Congress effected a "total transfer" of local criminal justice responsibilities from those courts to the local courts (H.R. Rep. No. 91-907, *supra*, p. 33). The role of Section 110 in that transfer of jurisdiction is to insulate the

[17] The legislation has been effective. Statistics compiled by the Administrative Office of the United States Courts show that the median time for disposing of criminal cases in the United States District Court for the District of Columbia has decreased from the "crippling figure of 9½ months * * * during fiscal year 1968" (S. Rep. No. 91-405, *supra*, p. 2) to 3.7 months in fiscal year 1975. Annual Report of the Director of the Administrative Office of the United States Courts for the Fiscal Year Ended June 30, 1975, p. XI-111. Similarly, the district court disposed of 1,890 criminal cases in calendar year 1968 and had a backlog of 1,669 pending cases at the end of that year. S. Rep. No. 91-405, *supra*, pp. 2-3. By contrast, the district court disposed of 845 criminal cases in fiscal year 1975 and had only 399 cases pending on its docket at the end of that period. Annual Report, *supra*, p. XI-96.

Article III courts from collateral involvement in such local criminal litigation in duplication of the collateral proceedings in the Superior Court.

If a person sentenced in Superior Court upon a conviction of a D.C. Code offense could, after exhausting local remedies, apply for a writ of habeas corpus in the United States District Court, the Article III court system would once again have to divert resources from its principal task—"to try cases arising under the Constitution and the nationally applicable laws of Congress" (*Palmore* v. *United States*, *supra*, 411 U.S. at 409)—and devote those resources to the administration of the local criminal justice system. That would naturally tend to compromise the ability of the district court to dispense prompt justice in criminal cases involving U.S. Code offenses.[18] Thus, by channeling all collateral attacks upon Superior Court sentences to the Superior Court itself, Section 110 protects the integrity of the reorganization plan and avoids unnecessary duplication

[18] The court of appeals stated that "[t]he transfer of trial jurisdiction effectuates the goal of swift justice; the question of post-collateral [*sic*] relief does not affect that process at all" (Pet. App. 38a). But that statement mistakenly assumes that Congress intended to assure prompt justice only in the Superior Court. As we have shown, and as this Court indicated in the first *Palmore* case (411 U.S. at 408-409), the Act was designed as well to enable the district court to administer swift justice in criminal cases brought under "the nationally applicable laws of Congress" (*id.* at 409). To the extent that the district court must adjudicate habeas corpus cases arising under locally aplicable laws, its capacity to perform its primary function with respect to cases arising under nationally applicable laws would be reduced.

of effort on the part of the federal judiciary, ensuring that the Act's division of criminal justice responsibilities is not defeated by means of habeas corpus litigation.[19]

c. The few specific references in the legislative history to the provisions of Section 110 confirm that Congress intended to preclude district court adjudication of post-conviction challenges to Superior Court sentences. The House Committee on the District of Columbia explained the provision as follows (H.R. Rep. No. 91-907, *supra*, p. 117):

> Rather than relying on the inherent power of the Superior Court to collaterally vacate sentences and grant post conviction relief, a new section, section 23-110, provides statutory procedures for collateral post conviction challenges, modeled on 28 U.S.C. § 2255 with only necessary technical changes.

Nearly identical language appeared in the report of

[19] It is no answer to say, as the court of appeals did, that an application for a writ of habeas corpus that challenges a Superior Court sentence on constitutional grounds "is a case arising under the Constitution" (Pet. App. 38a) and therefore within the class of cases that Congress intended the district courts to adjudicate. Congress drew the jurisdictional line not on the basis of the issues tendered by a litigant but on the basis of the underlying criminal offense with which the litigant was charged. The Article III courts were assigned the criminal cases arising under nationally applicable laws. The Article I courts "handle criminal cases only under statutes that are applicable to the District of Columbia alone" (*Palmore* v. *United States*, *supra*, 411 U.S. at 407). That division of responsibility is no less applicable when, in a case properly assigned to the local court system, a litigant raises an issue of constitutional law.

the Senate Committee (S. Rep. No. 91-405, *supra*, p. 38).

The court of appeals inferred from these statements that Congress intended in Section 110 merely to provide "a detailed statutory remedy" explicitly authorizing the Superior Court to entertain post-conviction challenges to its own sentences "rather than leaving the new local courts to rely once again upon their inherent authority" to entertain such collateral attacks (Pet. App. 30a).

The court of appeals could find no basis for concluding that Congress intended the newly created statutory remedy to be exclusive. Rather, relying upon the general legislative aim of establishing "a dual court system analogous to the relationship between the federal and state courts" (Pet. App. 33a), the court determined that Congress must have intended to "allow the district court to entertain petitions for collateral review in the same manner as district courts do for the fifty states" (*id.* at 35a). Looking, therefore, to the provisions of 28 U.S.C. 2254 as a guide to the meaning of Section 110 (see Pet. App. 45a),[20] the court of appeals concluded that Section

[20] Section 2254—which is set forth in Addendum B to this brief, *infra*, pp. 24a-27a — gives federal district courts jurisdiction to entertain a state prisoner's application for a writ of habeas corpus if the applicant claims that he is in custody in violation of the Constitution or laws of the United States. The section provides that the application "shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State" or that the State's corrective process is unavailable or ineffective. 28 U.S.C. 2254(b).

110, like Section 2254, should be construed as "an exhaustion of remedies statute, requiring initial submission of claims to the local courts" (*ibid.*).

The court's analysis is seriously flawed. First, although Congress unquestionably envisioned the reorganized District of Columbia judicial system as essentially "analogous to court systems in the several States" (H.R. Rep. No. 91-907, *supra*, p. 35), the analogy was not meant to be perfect. For example, the judges of the District of Columbia courts, unlike the judges of state courts, are nominated by the President and confirmed by the Senate. It is not surprising, in light of the federal control over the appointing process for local court judges, that Congress would choose to make those judges, unlike state judges, exclusively responsible for adjudicating collateral challenges to Superior Court sentences.

Second, even if the general federal-state analogy might, in the absence of Section 110, suggest the appropriateness of looking to 28 U.S.C. 2254 for guidance concerning the probable Congressional intent with respect to post-conviction remedies, Section 110 clearly provides a comprehensive post-conviction remedial scheme. Its provisions are not like those of 28 U.S.C. 2254. Rather, they are nearly identical to those of 28 U.S.C. 2255.[21] And if there were any remaining doubt concerning the proper

[21] Section 110 and Section 2255 are set forth in full in Addendum B to this brief, *infra*, pp. 27a-30a. Subsection (g) of Section 110, together with the corresponding portion of Section 2255, is also set forth at pp. 2-3, *supra*.

inference to be drawn from that remarkable resemblance, the legislative history reflects that the model for Section 110 was Section 2255, not Section 2254.

To the extent that the provisions of Section 110 are thought to be unclear, therefore, the place to look for assistance is Section 2255. Indeed, "[t]o read [Section 110] without reference to this model is to read it out of the context in which Congress enacted it" (*Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535, 541).

Section 2255 provides that a prisoner seeking to challenge collaterally the validity of a sentence imposed by a court established by Act of Congress may proceed by motion in the sentencing court. It also provides that an application for a writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief by motion under Section 2255 "shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." [22]

[22] 23 D.C. Code 110(g) contains nearly identical language. It provides (with italics to indicate differences) that an application for a writ of habeas corpus on behalf of a prisoner who is authorized to apply for post-conviction relief by motion in the Superior Court "shall not be entertained *by the Superior Court or by any Federal or State Court* if it appears that the applicant has failed to *make a motion for relief under*

Section 2255 "was intended * * * to provide in the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in the court of the district where the prisoner was confined" (*Hill* v. *United States*, 368 U.S. 424, 427). See also *Sanders* v. *United States*, 373 U.S. 1, 13-15; *United States* v. *Morgan*, 346 U.S. 502, 511; *United States* v. *Hayman*, 342 U.S. 205, 219. There is no support in any of this Court's decisions for the view that Section 2255 is merely an exhaustion of remedies provision, entitling a prisoner to seek habeas corpus relief in another court after having been unsuccessful in the collateral attack proceeding in the sentencing court. On the contrary, the post-conviction remedy by motion in the sentencing court wholly displaces traditional habeas corpus relief except when the motion procedure is "inadequate or ineffective." [23] "If relief is possible under § 2255, it is the exclusive remedy and habeas corpus is barred for a federal prisoner." 2 Wright, *Federal Practice and Procedure: Criminal*, § 591, p. 584 (1969).

Congress intended the same result under the materially indistinguishable provisions of 23 D.C. Code 110.[24] Although the court of appeals concluded that

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this section or that *the Superior Court* has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

[23] On the meaning of that phrase, see note 12, *supra*.

[24] This understanding is evidenced by the fact that, shortly after its enactment, the man who had been counsel to the Senate Committee on the District of Columbia when it re-

Section 110 was merely an exhaustion of remedies provision, permitting applications for writs of habeas corpus by persons whose Section 110 motions have been denied by the Superior Court, the majority understandably could point to nothing in the legislative history to explain why Congress would adopt the language of Section 2255 to accomplish a result so different from that of Section 2255.

As if to ensure that no court would misconstrue the comprehensive nature of the bar of Section 110 (g) against collateral attacks of any kind except by motion in Superior Court, Congress made a significant addition to the language of Section 2255 in adapting it to the purposes of the Court Reform Act. Whereas Section 2255 provides that an application for a writ of habeas corpus by a person authorized to seek relief by motion in the sentencing court "shall not be entertained," Section 110(g) provides that an application for a writ of habeas corpus in such circumstances "shall not be entertained *by the Superior Court or by any Federal or State court*" (emphasis added). This is surely the single most significant clue in the legislative history regarding the Congressional purpose. The added (and seemingly re-

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ported out the Court Reform Act wrote that "the Court Reorganization Act extinguishes the traditional authority of the federal courts to review local judicial action by the issuance of writs of habeas corpus." Williams, *District of Columbia Court Reorganization, 1970*, 59 Geo. L.J. 477, 499 (1971). See also Rauh and Silbert, *Criminal Law and Procedure: D.C. Court Reform and Criminal Procedure Act of 1970*, 20 Am.U.L. Rev. 252, 339-340 (1970).

dundant) language eliminated any possible basis for construing Section 110(g)'s prohibition as merely an exhaustion provision rather than as a bar to the exercise of post-conviction habeas corpus jurisdiction by the Article III federal courts. (Compare the statute considered by this Court in *Gusik* v. *Schilder*, 340 U.S. 128, discussed at pp. 49-51, *infra*.)

We accordingly submit that the conclusion is inescapable that Section 110, like Section 2255, is designed to give the sentencing court *exclusive* jurisdiction, except in extraordinary circumstances, to entertain post-conviction challenges to the validity of its own sentences.[25]

d. The court of appeals believed that, if Congress had intended to deprive the United States District Court of habeas corpus jurisdiction over post-conviction challenges to Superior Court sentences, the proposed legislation would "have sparked considerable debate and controversy" (Pet. App. 38a). But that would be true only if the members of Congress viewed Section 110 the way the court of appeals viewed it—as a possibly unconstitutional

[25] Although the United States District Courts are consequently without general authority to entertain habeas corpus applications on behalf of persons attacking Superior Court sentences, that does not mean that "the district court here [in the District of Columbia] would possess less jurisdiction than in other districts" (Pet. App. 35a). Under Section 110(g), habeas corpus applications may not be entertained "by *any* Federal * * * court" (emphasis added). The jurisdiction of the District Court for the District of Columbia is neither greater nor lesser in this respect than that of any other district court.

suspension of the privilege of the writ of habeas corpus that would, in any event, "effectuate a substantial reduction" in the jurisdiction of Article III courts (Pet. App. 41a).

There is every reason to believe, however, that Congress viewed Section 110, modeled as it was upon the familiar provisions of 28 U.S.C. 2255, as an essentially uncontroversial measure that would import into the local court system the same effective post-conviction procedures that had been applicable in the United States District Courts since 1948. Both provisions serve the important practical purpose of confining collateral attacks upon criminal convictions to the forum that is likely to be the most convenient and best equipped to adjudicate them—the sentencing court. See *United States* v. *Hayman, supra; Hill* v. *United States, supra.*

One apparent consequence of the court of appeals' reading of Section 110, however, would be that the many prisoners confined outside the District of Columbia under sentence of the Superior Court could attack their convictions in the United States District Court in the district of their confinement.[26] It is reasonable to suppose, in view of the purposes of the statute on which Section 110 was modeled, that the prospect of district courts in Kansas or Georgia or Illinois reviewing the judgments of the local District

[26] The United States Bureau of Prisons has informed us that, as of October 28, 1975, a total of 2,678 persons who had been convicted of D.C. Code offenses were incarcerated in institutions located outside the District of Columbia (2,060

of Columbia courts would itself have "sparked considerable debate" (Pet. App. 38a) if Congress had understood that to be the effect of the provision.

In these circumstances, if "the congressional silence, when contrasted with the extended constitutional debates over other proposals, [is] both 'curious' and significant" (Pet. App. 40a; footnote omitted), the implication is not that "Congress never intended section 110 to affect the district court's jurisdiction" (*id.* at 41a), but rather that Congress saw no serious constitutional difficulty with a provision that would commit to the federally appointed District of Columbia judges exclusive responsibility (subject to the availability of review by this Court) for the trials and post-conviction proceedings in criminal cases arising under locally applicable law (see pp. 55-72, *infra*). Congress had provided 20 years earlier in 28 U.S.C. 2255 that post-conviction collateral attacks upon sentences imposed by the Article I territorial courts must be brought exclusively by motion in those courts,[27] and no court had found in the intervening period that the statute was in that respect unconstitutional. There was thus no reason for Congress to assume that the constitutionality of the precisely parallel provision of Section 110 would be in serious doubt.

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of them at Lorton Reformatory, in the Eastern District of Virginia), while only 651 such persons were incarcerated within the District of Columbia.

[27] See *United States ex rel. Leguillou* v. *Davis*, 212 F. 2d 681 (C.A. 3); note 31, *infra*.

The decisions of this Court on which the court of appeals principally relied are inapposite. This is not a case like *Brown* v. *Allen*, 344 U.S. 443, where the Court was "unwilling to conclude without a definite congressional direction" that the language of 28 U.S.C. 2254—precluding federal habeas corpus unless the applicant has "exhausted the remedies available in the courts of the State * * * by any available procedure" (28 U.S.C. 2254(c))—"was intended by the Congress to eliminate the right of a state prisoner to apply for relief by habeas corpus to the lower federal courts" (344 U.S. at 450). Barring state prisoners from all access to post-conviction federal habeas corpus remedies would have been a significant change indeed, and neither the language of the statute nor the legislative history suggested any such Congressional purpose (*id.* at 449-450).

Here, by contrast, the legislation left to the United State District Courts the same function that they have under 28 U.S.C. 2255. Their post-conviction habeas jurisdiction in both cases comes into play only if the remedy by motion in the sentencing court is inadequate or ineffective to test the legality of the applicant's detention. Both the statutory language and the legislative history of Section 110 provide "a definite congressional direction" (344 U.S. at 450) that the Superior Court's jurisdiction over collateral post-conviction proceedings is otherwise exclusive.

Similarly, Section 110 represents no "break with history" comparable to the one that would have re-

sulted if Congress, in Article 53 of the Articles of War, "had intended to deprive the civil courts of their habeas corpus jurisdiction" to entertain challenges to court-martial judgments. *Gusik* v. *Schilder*, 340 U.S. 128, 132-133. The Court in *Gusik*, finding no "plain and unmistakable" expression of such a legislative purpose, was unwilling to give the language of Article 53 the "strained construction" that would have been necessary "to stir the constitutional issue that is tendered" (*id.* at 133).

Unlike Article 53—which provided that the action of the Judge Advocate General upon a request for a new trial "shall be final and conclusive" and that an order publishing such action "shall be binding upon all departments, courts, agencies, and officers of the United States" (340 U.S. at 130, n. 1)—23 D.C. Code 110(g) explicitly precludes any court from entertaining an application for a writ of habeas corpus unless the remedy by motion in the Superior Court is "inadequate or ineffective." Thus, not only is the result here far less drastic than that attributed to Article 53 by the petitioner in *Gusik*, but also the statute and its legislative history here reflect a "plain and unmistakable" Congressional purpose (*id.* at 133) to limit the habeas corpus jurisdiction of the district courts in favor of the remedy by motion in the Superior Court. Whereas "[t]he finality language [of Article 53] so adequately serve[d] the more restricted purpose" of requiring an exhaustion of military remedies prior to resorting to federal habeas corpus (*ibid.*), the language of Section 110 does

not lend itself to a similar reading. It would take "a strained construction" (*ibid.*) here to *avoid* the constitutional question.

Nor is Section 110 like the proposed legislation to which the court of appeals referred to illustrate the kind of constitutional debate in Congress that it believed Section 110 should have generated (see Pet. App. 38a-40a). Proposed Section 702 of the Omnibus Crime Bill of 1968, S. 917, 90th Cong., 2d Sess. (set forth at Pet. App. 39a, n. 41), would have eliminated all jurisdiction in Article III courts to provide post-conviction habeas corpus relief to state prisoners challenging their state convictions. Similarly, the provisions of S. 567, 93d Cong., 1st Sess., (1973), would have restricted the availability of post-conviction federal habeas corpus relief for both federal and state prisoners (see Pet. App. 40a, n. 43).

No such changes were made by Section 110. Like 28 U.S.C. 2255, Section 110 provides a remedy in the sentencing court that, in terms of its nature and scope, is "exactly commensurate with that which had previously been available by habeas corpus" (*Hill* v. *United States*, *supra*, 368 U.S. at 427).[28] Since

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[28] Prior to the enactment of the Court Reform Act, the post-conviction remedy of habeas corpus was available at most to persons convicted of D.C. Code misdemeanors and petty offenses. Since the United States District Court had exclusive jurisdiction over D.C. Code *felony* prosecutions, persons convicted of felonies were, under 28 U.S.C. 2255, even then restricted to the remedy by motion in the sentencing court. We therefore do not, by our reference to the decision in *Hill*,

Section 2255 stirred little Congressional debate (see *United States* v. *Hayman*, *supra*, 342 U.S. at 214-219), there is little reason to suppose that the nearly identical provisions of Section 110 would provoke controversy.

e. Respondent Palmore appended to his brief in opposition to our petition for certiorari portions of documents furnished to him by the Department of Justice on his request after the judgment of the court of appeals had been entered. The documents are: (1) an internal Department of Justice memorandum prepared in July 1969 in connection with the Department's work on the Court Reform Act, a portion of which memorandum (Br. in Opp. App. 2a-5a) addresses the question "[s]hould a provision similar to 28 U.S.C. 2255 be enacted to govern post-conviction remedies in the new court system?"; (2) a letter dated July 11, 1969, from the Attorney General to the Speaker of the House transmitting the Department's legislative proposal to reorganize the District of Columbia judicial system (*id.* at 6a-8a); (3) a summary of the Department's proposed legis-

acquiesce in any description of Section 110 as having significantly diminished the habeas corpus jurisdiction of the district courts. For the most part, any reduction of habeas-type collateral litigation in the district courts followed from the Act's transfer of D.C. Code felony jurisdiction to the local court system, with the result that the district court was no longer the sentencing court with respect to those offenses.

lation (*id.* at 9a-13a), one paragraph of which (*id.* at 13a) refers to Section 110; and (4) a summary of amendments relating to criminal law and procedure (*id.* at 14a-15a), one paragraph which relates to Section 110 (*id.* at 15a).

None of these materials "furnish[es] additional support for the decision below" (Br. in Opp. 16). The only documents that were transmitted to Congress were the Attorney General's letter and its accompanying summary. The letter does not mention Section 110; the summary describes the section in essentially the same terms used by the Senate and House Committee Reports (see Br. in Opp. App. 13a; pp. 40-41, *supra*).

Neither of the internal documents is probative with respect to the intent of Congress, because neither was conveyed to Congress.[29] But to the extent that they may shed light on the thinking of Department of Justice lawyers, they confirm rather than undercut the plain meaning of the statutory language.

Palmore attributes controlling significance to a sentence in the July 1969 internal Department mem-

[29] Mr. Justice Holmes remarked that, in construing a statute, "[w]e do not inquire what the legislature meant; we ask only what the statute means." *The Theory of Legal Interpretation*, 12 HARV.L.REV. 417, 419 (1899), quoted in *S&E Contractors, Inc.* v. *United States*, 406 U.S. 1, 14, n. 9. One need not agree with that view in order to reject Palmore's suggestion that this Court inquire neither what the statute means, nor even what the legislature meant, but what the Department of Justice lawyers meant in proposing the legislation.

orandum explaining that one of the minor differences between the proposed Section 110 and its model, 28 U.S.C. 2255, was that Section 110 "make[s] it clear that a habeas corpus motion shall not be entertained *in any court* unless the prisoner has first filed motion to vacate judgment in the Superior Court of the District of Columbia when that is the appropriate remedy" (Br. in Opp. App. 4a; emphasis in original). The author was obviously focusing on the italicized words, not on the description of Section 110's operation. To the extent that the rest of the sentence implies that Section 110 would operate only as an exhaustion of remedies provision, the sentence is contradicted by another sentence on the same page, in which the author correctly states that Section 110 would result in "uniform procedures in Federal and local courts" (Br. in Opp. App. 4a). Indeed, considered as a whole, the portion of the memorandum discussing the subject of collateral attack on criminal convictions makes clear that Section 110 was viewed as identical in all material respects to 28 U.S.C. 2255. It could hardly have been so viewed if it was thought that a court other than the sentencing court would also have power to entertain collateral attacks.

Moreover, the other internal Department document included in Palmore's appendix states unequivocally that the proposed Section 110 would "requir[e] that a prisoner challenging his conviction or sentence do so in the convicting court" and that, "[a]s is the case in federal courts, habeas corpus would be barred unless the statutory remedy is inadequate or ineffective" (Br. in Opp. 15a).[30]

II

SECTION 110 DOES NOT VIOLATE THE CONSTITUTION

The court of appeals identified two constitutional questions that it believed would be raised if Section 110 were interpreted—as we have shown it must be—to preclude Article III district courts from routinely entertaining post-conviction habeas corpus applications challenging Superior Court sentences. Those questions are: (1) whether the statute suspends the privilege of the writ of habeas corpus, in violation of Article I, Section 9, Clause 2, of the Constitution; and (2) whether it denies to persons convicted of criminal offenses in the Superior Court the equal protection of the laws, in contravention of the Due Process Clause of the Fifth Amendment.

The court of appeals discussed but did not decide these questions, determining instead to "construe" the statute so as to avoid them. Because neither

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[30] Palmore asserts that these comments in the Department's memorandum do "not address the issue involved in this case since the introductory clause '[a]s is the case in federal courts' makes it clear that the reference is to the habeas corpus jurisdiction of the local courts, and not to the federal courts" (Br. in Opp. 18, n. 30). While we hesitate to embroil ourselves further in a bootless discourse over the correct interpretation to be given to Department of Justice memoranda that were not communicated to Congress, we note that Palmore's reading of the Department's memorandum is quite obviously "strained and unnatural" (*Chandler* v. *Roudebush*, No. 74-1599, decided June 1, 1976, slip op. 8).

the language nor the legislative history of Section 110 permits such a construction, we do not believe that the constitutional questions may properly be avoided.

A. The Statute Does Not Suspend the Privilege of the Writ of Habeas Corpus

The only mention of the writ of habeas corpus in the Constitution is in Article I, Section 9, Clause 2, which states:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Respondents' argument, as summarized by the court of appeals, has two elements. First, they contend that Congress, having created the inferior Article III courts and having vested them with jurisdiction to entertain post-conviction applications for writs of habeas corpus, "may not, consistent with the suspension clause, dilute or remove" that jurisdiction (Pet. App. 17a) unless it "substitute[s] a remedy 'exactly commensurate' with the Great Writ" (*id.* at 14a). Second, they argue that Section 110's substitute remedy—a post-conviction motion in the Superior Court—is not commensurate with the writ of habeas corpus "because the article III salary and tenure protections were not extended to Superior Court judges" (*id.* at 15a). It follows, on respondents' analysis, that insofar as Section 110 dilutes the jurisdiction of the Article III district courts to

entertain post-conviction habeas corpus applications, it impermissibly suspends the privilege of the writ.

Both elements of respondents' argument are incorrect. To facilitate analysis, we address those elements in reverse order.

1. *Section 110, like 28 U.S.C. 2255, provides in the sentencing court a post-conviction remedy exactly commensurate with the writ of habeas corpus*

The remedy provided in Section 110 is in all material respects—including the grounds upon which relief may be sought, the nature of the relief that may be granted, and the procedure for considering a request for relief—equivalent to the writ of habeas corpus. That much is settled by this Court's decision in *United States* v. *Hayman*, 342 U.S. 205, which held that 28 U.S.C. 2255—the provisions of which are virtually identical to those of 23 D.C. Code 110—affords to federal prisoners "the same rights" of collateral attack on their convictions that they previously had by way of habeas corpus, but "in another and more convenient forum," namely, the sentencing court rather than the court in the district of confinement (342 U.S. at 219). As the Court reiterated in *Hill* v. *United States*, 368 U.S. 424, 427, "it conclusively appears from the historic context in which § 2255 was enacted that the legislation was intended simply to provide in the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in the court of the district where the prisoner was confined."

Since, as Judge Robb stated below in his dissenting opinion in *Palmore*, "[t]he relief defined in section 110 * * * is the equivalent of federal habeas corpus relief * * *, the basis for the argument that 'section 110 is not exactly commensurate to habeas corpus' is reduced to the difference in the tenure and salary protections accorded District Court and Superior Court judges" (Pet. App. 50a).

Like Judge Robb, we think the argument "is answered in principle" (*ibid.*) by this Court's decision in the first *Palmore* case, where the same "difference in the tenure and salary protections" (*ibid.*) was the basis of Palmore's contention that "criminal offenses under the laws passed by Congress may not be prosecuted except in courts established pursuant to Art. III" (411 U.S. at 400). This Court, while not "discount[ing] the importance attached to the tenure and salary provisions of Art. III," nevertheless "conclude[d] that Congress was not required to provide an Art. III court for the trial of criminal cases arising under its laws applicable only within the District of Columbia" (*id.* at 410), even though federal constitutional issues (such as Palmore's Fourth Amendment claims) might be expected to arise in such cases.

Here, too, one need not discount the importance of the Article III tenure and salary provisions to conclude that Congress was not required to provide an Article III court for the adjudication of post-conviction challenges to sentences imposed by the Article I Superior Court in "criminal cases arising

under * * * laws applicable only within the District of Columbia" (*ibid.*). Even if one assumes—as we do not (see pp. 63-67, *infra*)—that the Suspension Clause guarantees respondents an opportunity to challenge their Superior Court convictions collaterally on constitutional grounds, nothing in the text of that clause or elsewhere in the Constitution supports their contention that Congress must provide an Article III forum for such a challenge and that a federally constituted court established pursuant to Article I is an inadequate forum for that purpose.

The judges of the Superior Court and the District of Columbia Court of Appeals are nominated by the President and confirmed by the Senate. 11 D.C. Code 1501(a). They take the oath proscribed for judges of courts of the United States. 11 D.C. Code 704, 905. Their tenure is 15 years, subject to mandatory retirement at age 70 and to removal, retirement, or suspension under specified circumstances by a Commission on Judicial Disabilities and Tenure. 11 D.C. Code 1502, 1521. The judges are automatically reappointed for an additional term of 15 years if a Judicial Nomination Commission determines that they are well qualified or exceptionally well qualified for reappointment. 11 D.C. Code App. (Supp. II) 433(c). Their compensation is fixed at 90 percent of the rate prescribed by law for United States District Court and United States Court of Appeals judges, respectively. 11 D.C. Code 703(b), 904(b).

Congress endeavored through these measures to structure a judicial system that would attract highly qualified persons to the local bench and assure their independence once appointed. S. Rep. No. 91-405, *supra*, pp. 8-11; H.R. Rep. No. 91-907, *supra*, pp. 35-39; 116 Cong. Rec. 24342-24343 (1970). "It was thought that such a system would be more workable and efficient in administering and discharging the work of a multifaceted metropolitan court system" (*Palmore* v. *United States*, *supra*, 411 U.S. at 409).

Although the Article III salary and tenure provisions applicable to United States District Judges are not extended to Superior Court judges, the structure created by Congress goes far toward providing analogous assurances to Superior Court judges. There is no reason to suppose that, as Article I federal judges, they are institutionally less able or less likely than are Article III district judges to give full and fair consideration to federal constitutional claims.

But even if one were to assume that the privilege of the writ of habeas corpus is in some sense diminished if its availability is limited to a federal court staffed by judges with Article I rather than Article III status—an assumption that we do not believe is supported by any decision of this Court —that would not amount to a *suspension* of the privilege. At least so long as the scope of and grounds for habeas corpus relief are left unaffected, we are aware of no textual or decisional basis for a claim that, merely because a person must apply for

the writ to a federal court constituted under Article I rather than under Article III, the privilege has been suspended in violation of the Constitution.[31]

The Constitution's history, we think, firmly supports the view that the Suspension Clause was not meant to foreclose Congress from controlling the procedural and jurisdictional aspects of habeas corpus. We have set forth as Addendum A to this

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[31] Indeed, if respondents' theory were correct, 28 U.S.C. 2255 presumably would also violate the Suspension Clause insofar as it provides that a person collaterally attacking a sentence imposed by an Article I territorial court (such as the District Court of the Virgin Islands) must do so by motion in the sentencing court. It is settled that "Section 2255 * * * made the District Court of the Virgin Islands the exclusive forum" for such post-conviction proceedings and that an Article III court would lack jurisdiction to entertain an application for a writ of habeas corpus unless the remedy by motion were inadequate or ineffective to test the legality of the applicant's detention. *United States ex rel. Leguillou* v. *Davis*, 212 F. 2d 681, 684 (C.A. 3). Although an appeal from a reviewable decision of a territorial court may be taken to a United States Court of Appeals (28 U.S.C. 1294), so that a territorial court movant under Section 2255, unlike a Superior Court movant under Section 110, has access at the appeal stage to an Article III tribunal, that distinction would not seem to justify a different result under the Suspension Clause. For if the privilege of the writ of habeas corpus requires an Article III tribunal for the adjudication of applications for the writ, and if substituting an Article I court system is a diminishment of the privilege that amounts to a suspension in violation of the Constitution, it is difficult to see why the availability of an Article III forum to review the Article I court's decision for legal errors would so far minimize the effect of limiting collateral challenges to the Article I sentencing court as to make constitutionally permissible what would otherwise be a prohibited "suspension" of the privilege.

brief, *infra*, pp. 1a-20a, a discussion of the pertinent historical materials taken from the Brief for the United States in *United States* v. *Hayman*, *supra*, in which the issue was whether, by providing in 28 U.S.C. 2255 that collateral challenges to federal sentences may be brought only by motion in the sentencing court and not by application for writ of habeas corpus, Congress violated the Suspension Clause.

Although the discussion was therefore directed to a somewhat different issue from the one presented here, it demonstrates that the framers of the Constitution were concerned with the power, which had been exercised repeatedly in England, to effect a complete suspension of the privilege of the writ. It was just such a total denial of any remedy for unjust detention that the framers had in mind when they drafted the Suspension Clause. They had no thought of defining the scope of the writ or prescribing the procedural details for its issuance, nor did they concern themselves with the nature of any tribunal to be established to entertain applications for the writ. Those matters they left to Congress. And, since the First Judiciary Act, Congress has repeatedly acted on the assumption that it has the power to regulate procedures in habeas corpus, to define the grounds for issuance of the writ, and to prescribe the jurisdiction of the federal courts to issue it. There is no support for the view that the privilege of the writ was understood to include access to an Article III court for its issuance.

In sum, we share Judge Robb's view of this aspect of the question (Pet. App. 51a):

> If without the dilution of his constitutional rights a man may be tried and sentenced to the penitentiary by an Article I judge of the Superior Court, I see no reason why he may not be limited to that same court when applying for collateral post-conviction relief. A prisoner's constitutional rights are no more diluted and he is no more disadvantaged in the one case than in the other. In both cases review may be had in the United States Supreme Court. The Article I courts held competent to administer the District of Columbia's criminal justice system exclusive of Article III courts are perforce competent to dispense collateral post-conviction relief exclusive of the habeas corpus jurisdiction of Article III courts.

2. The Suspension Clause does not prohibit Congress from restricting the availability of habeas corpus as a means of collaterally attacking a judgment of conviction entered by a court of competent jurisdiction

Even if the privilege of the writ of habeas corpus were viewed as compelling the availability of an Article III tribunal for the adjudication of applications for the writ, the Constitution's history shows that the framers did not understand the privilege to extend to collateral attacks upon criminal convictions. Accordingly, limitations upon the nature and scope of post-conviction collateral relief do not implicate the Suspension Clause.

At the time the Constitution was adopted, the rule at common law was that "once a person had been convicted by a superior court of general jurisdiction, a court disposing of a habeas corpus petition could not go behind the conviction for any purpose other than to verify the formal jurisdiction of the committing court." Oaks, *Legal History in the High Court—Habeas Corpus*, 64 Mich.L.Rev. 451, 468 (1966). As this Court stated in *United States* v. *Hayman*, *supra*, 342 U.S. at 210-211:

> Although the objective of the Great Writ long has been the liberation of those unlawfully imprisoned, at common law a judgment of conviction rendered by a court of general criminal jurisdiction was conclusive proof that confinement was legal. Such a judgment prevented issuance of the writ without more.[32]

The early decisions of this Court reflected a similar understanding. See *Ex parte Watkins*, 3 Pet. 193, 202-203; *Ex parte Watkins*, 7 Pet. 568, 574; *Ex parte Yerger*, 8 Wall. 85, 101; see also *Frank* v. *Mangum*, 237 U.S. 309, 329-331.

We do not here undertake to recapitulate the recent scholarship concerning the common-law scope

[32] The rule was the same under the Habeas Corpus Act of 1679, 31 Car. II, c. 2, which governed the availability of the writ and its procedural aspects at the time of the United States Constitution. That Act expressly excepted from those eligible to apply for the writ "persons convict or in execution by legal process" (Section III). State legislation in the United States at about the time of the Constitutional Convention was generally patterned on the English Act (see Addendum A, *infra*, pp. 14a-15a).

of the writ and its historical development in England and the United States.[33] It is enough to note that the scholarly consensus accords with our view that the privilege of the writ of habeas corpus that the framers meant to protect from suspension did not entitle a prisoner in custody pursuant to a sentence imposed by a court of competent jurisdiction to obtain a collateral review of the validity of his conviction.[34]

Although Congress has by statute made such collateral review available in specified circumstances, it could, without violating the prohibition of the Suspension Clause, wholly eliminate the availability of collateral review in the federal courts, by habeas corpus or otherwise, of any conviction entered by a court of competent jurisdiction. As Judge Friendly has stated: "It can scarcely be doubted that the writ protected by the suspension clause is the writ known to the framers, not as Congress may have chosen to

[33] See, *e.g.*, Oaks, *Legal History in the High Court—Habeas Corpus, supra;* Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners,* 76 Harv.L.Rev. 441 (1963); Mayers, *The Habeas Corpus Act of 1867: The Supreme Court as Legal Historian,* 33 U.Chi.L.Rev. 31 (1965); Note, *Developments in the Law—Federal Habeas Corpus,* 83 Harv.L.Rev. 1038 (1970). See also Hart and Wechsler, *The Federal Courts and the Federal System,* Chap. X, pp. 1424-1538 (2d ed. 1973).

[34] To the extent that the Court's opinion in *Fay* v. *Noia*, 372 U.S. 391, may be said to reflect a different view of the scope of the writ at the time of the Constitution, the correctness of its historical analysis has been called seriously into question. See *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 252-256 (Mr. Justice Powell concurring).

expand it or, more pertinently, as the Supreme Court has interpreted what Congress did." Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U.Chi.L.Rev. 142, 170 (1970).

In contrast, the premise of respondents' Suspension Clause argument is that, whatever the provision may have meant when adopted, Congress may not withdraw any aspect of the privilege once it has been extended by statute (see Pet. App. 17a). Under that theory, the Suspension Clause functions as a constitutional ratchet, permitting Congress to expand the availability of the writ but then constitutionalizing each such expansion and putting it beyond the reach of subsequent legislative contraction. There is absolutely no reason to suppose that the framers intended that result, and the result is not jurisprudentially sound. An argument similar to respondent's was recently rejected in *United States* v. *MacCollom*, No. 74-1487, decided June 10, 1976, slip op. 5 (plurality opinion).

Of course, Congress has not here abolished the statutory right to a post-conviction review of Superior Court convictions, and the Court therefore need not reach the question whether Congress could properly do so. Section 110 goes no further than to channel all such collateral challenges to the sentencing court. If this amounts to a "dilution" of the privilege that respondents contend was previously extended under 28 U.S.C. 2241, *et seq.*, it is a dilution only in terms of forum and not at all in terms of scope, and it relates only to post-conviction remedies.

If the Court is not "imprisoned by every particular of habeas corpus as it existed in the late 18th and 19th centuries" (*Schneckloth* v. *Bustamonte*, 412 U.S. 218, 256, Mr. Justice Powell concurring), even less should it be imprisoned by "every particular" of the writ as it has been extended by subsequent Congressional enactments. Those legislative expansions do not "liberate us from all historical restraint" (*ibid.*) in applying the Suspension Clause of the Constitution. Thus, even if the clause would not permit a complete abolition of post-conviction federal habeas corpus relief, it could surely tolerate a shift in the forum available for such relief from an Article III to an Article I federal court.

B. Section 110 Does Not Deny Equal Protection to Persons Convicted of Criminal Offenses in the Superior Court

The court of appeals suggested that Section 110 may be said to raise equal protection problems by discriminating against the class of persons convicted of criminal offenses in the Superior Court. The argument apparently is that the statute impermissibly disfavors that class by depriving its members of access to an Article III forum for adjudication of post-conviction collateral attacks on their sentences, while allowing such access under 28 U.S.C. 2254 and 2255 to persons convicted of criminal offenses in state courts and in other federal courts.

The concept of equal protection, however, does not encompass a right to litigate claims in any particular tribunal. See, *e.g.*, *Missouri* v. *Lewis*, 101 U.S. 22,

30-32; *Duncan* v. *Missouri*, 152 U.S. 377, 382-383; *Mallett* v. *North Carolina*, 181 U.S. 589, 597-599. As this Court stated in an analogous context, "[i]t is not under any view the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the State has provided equal laws prevail." *Cincinnati Street Railway Co.* v. *Snell*, 193 U.S. 30, 37. Equal laws prevail in the Superior Court and the United States District Courts, for the collateral remedy provided by Section 110 is substantially identical to that available under 28 U.S.C. 2254 and 2255, and that remedy provides adequate and effective procedures to test the legality of a detention.

Moreover, respondents' argument assumes that an Article III forum is materially preferable to an Article I federal forum for the adjudication of post-conviction collateral attacks. As we have already shown, however, the tenure and salary differences between the two court systems have no impact on the substantive scope and quality of the procedural remedy available in the two courts. In both instances the courts are federal courts, and the judges are federal judges, appointed by the President and confirmed by the Senate, who apply and interpret laws enacted by Congress.

Thus, any person in custody under a sentence imposed by a court—whether it is a federal district court, a state court, a territorial court, or the Superior Court of the District of Columbia—has available to him in a federal forum a post-conviction remedy in the nature of habeas corpus. If he was sentenced by a federal court, his remedy lies in the sentencing court. If he was sentenced in a state court, his remedy (after exhaustion of available state remedies) lies in an appropriate federal district court. Each relevant class of convicted persons is thus accorded equivalent treatment, and none is invidiously discriminated against.

Although persons convicted in the Superior Court or one of the territorial courts are limited to an Article I tribunal for their collateral post-conviction remedy, the different status of the available federal forum is a consequence of the underlying Congressional determination to establish an Article I court system for the trial of criminal cases. That determination leads unavoidably to the creation of a special class of federal prisoners in custody under sentences imposed by an Article I court. Any post-conviction remedy for that class of prisoners would perforce place them in a position somewhat different from that of other prisoners.

Here, Congress chose to follow the model of Section 2255, and respondents claim that the result is to deprive them of the access to an Article III tribunal that other prisoners are afforded. But to provide, as respondents contend Congress must, that members of their class may bring both a motion for collateral relief in the Article I sentencing court and, if that is unsuccessful, a subsequent application for a writ of habeas corpus in an Article III district

court would give to the members of their class more than is given to the members of any other class—the opportunity to present their collateral claims to two different federal court systems. Other federal and state prisoners who are permitted to present their collateral claims to only a single federal court system would in that case have an equal protection argument analogous to the one presented by respondents.

In our view Congress may, consistent with the Due Process Clause of the Fifth Amendment, properly choose either to provide D.C. Code convicts with a post-conviction forum in the United States District Court or to confine them to a remedy in the sentencing court, on the model of Section 2255. Just as Congress was authorized, in the exercise of its plenary power "to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment" (*Palmore* v. *United States, supra,* 411 U.S. at 408), to establish an Article I District of Columbia court system with jurisdiction over the trial of criminal cases arising under the provisions of the D.C. Code, so too was it authorized to provide that persons convicted of such offenses in that court system may collaterally challenge their convictions only by motion in those courts.

Moreover, the fact that Congress in 28 U.S.C. 2254 has provided state prisoners an avenue for post-conviction collateral attacks in federal district court does not mean that it must do the same for persons under sentence of an Article I federal court. In the

case of state prisoners, Congress exercises no control over the nature and scope of post-conviction remedies, if any, that may be made available to entertain claims that a conviction was procured in violation of the Constitution or laws of the United States. In the case of prisoners convicted in either the District of Columbia local courts or the territorial courts, Congress has prescribed a comprehensive post-conviction remedy as broad as that available to other federal convicts. Accordingly, it is plainly not unreasonable for Congress to determine that there is a need to provide post-conviction federal court remedies for state prisoners, while at the same time determining that it is unnecessary to duplicate for District of Columbia and territorial convicts the system of post-conviction review that it has furnished to them in the Article I courts.

Congress has provided only one post-conviction review forum for all other convicts, both state and federal, and equal protection principles do not oblige it to afford D.C. Code convicts two separate federal forums for their collateral claims.

Finally, the utility of Section 110(g) in the context of the Court Reform Act makes it clear that, even if the affected class of prisoners may be said to be perceptibly disadvantaged in comparison with some other prisoners, that characteristic of the system constructed by Congress is a wholly reasonable one. Section 110 serves not only to avoid having district courts in various parts of the country reviewing Superior Court judgments in criminal cases

involving D.C. Code offenses (see pp. 47-48, *supra*), but also to assure that the purposes of court reorganization in the District of Columbia are not defeated through the substantial expansion of the caseload of the general federal courts that would result if prisoners were free to file in the district court collateral challenges to sentences imposed by the Superior Court (see pp. 38-40, *supra*).[35]

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[35] The court of appeals stated that "there is a similar second classification involving prisoners *within* the District which poses equal protection problems" (Pet. App. 26a; emphasis in original). The court was referring to the different treatment accorded under the Act to pre-trial applications for writs of habeas corpus (which may in certain circumstances be filed in the United States District Court) and post-conviction collateral attacks (which may be brought only in the sentencing court). But even if this different allocation of judicial jurisdiction presents an equal protection issue (see pp. 67-68, *supra*), the two classes involved are not similarly situated and therefore need not be treated identically. Congress may reasonably provide different procedures and a different forum to test the legality of a detention under executive authority than to test a detention under authority of a judicial judgment of conviction in a criminal case. Indeed, the historical basis for such a distinction (see pp. 64-65, *supra*) would itself fully justify such a legislative classification.

CONCLUSION

The judgments of the court of appeals should be reversed.

Respectfully submitted.

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ADDENDUM A

Excerpt from Brief for the United States, pp. 61-80, in *United States* v. *Hayman*, 342 U.S. 205

SECTION 2255 IS NOT A SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS WITHIN THE MEANING OF ART. I, SECTION 9, OF THE CONSTITUTION

A. THE CONSTITUTION GIVES CONGRESS BROAD POWER TO REGULATE THE JURISDICTION OF FEDERAL COURTS TO ISSUE WRITS OF HABEAS CORPUS AND THE PROCEDURE UPON SUCH WRITS

The majority of the court below appears to have regarded the constitutional guaranty against suspension of the writ of habeas corpus as fixing immutably various details of habeas corpus procedure as it existed in 1789. The framers of the Constitution, in this area as in others, carefully avoided placing the law in any such strait-jacket. Their concern was to guard against the denial of any remedy to one unlawfully detained, not to prescribe procedural details. This is clearly shown by the discussions attending the adoption of Article I, § 9, of the Constitution, the historical evils at which that provision was aimed, the subsequent practice of Congress in prescribing the scope of and procedure on habeas corpus, and the uniform course of judicial decision recognizing the validity of that practice.

The only mention of the writ of habeas corpus in the Constitution is the provision of Article I, § 9, cl. 2, that:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

The discussions attending the adoption of this provision illustrate the breadth of the framers' objective. Charles Pinckney offered the following motion to the constitutional convention (5 Elliot's *Debates* 445):

> The privileges and benefit of the writ of *habeas corpus* shall be enjoyed in this government in the most expeditious and ample manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding — months.[41]

When Pinckney's motion came up for discussion, Madison's notes contain the following entries (5 Elliot's *Debates* 484):

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[41] Pinckney's draft was apparently taken from the Massachusetts Constitution of 1780 which provided (c. 6, art. 7): "The privilege and benefit of the writ of *habeas-corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months." The New Hampshire Constitution of 1784 contained a similar provision with suspension limited to three months. The Georgia Constitution of 1777 provided: "The principles of the habeas corpus act shall be a part of this constitution." No other constitution in force at the time of the convention referred to the writ, although some contained provisions against the suspension of statutes generally.

> Mr. Rutledge was for declaring the *habeas corpus* inviolate. He did not conceive that a suspension could ever be necessary, at the same time, through all the states.
>
> Mr. Gouverneur Morris moved, that "the privilege of the writ of *habeas corpus* shall not be suspended, unless where, in cases of rebellion or invasion, the public safety may require it."
>
> Mr. Wilson doubted whether in any case a suspension could be necessary, as the discretion now exists with judges, in most important cases, to keep in gaol or admit to bail.

The Morris motion carried. All agreed to the part reading: "The privilege of the writ of *habeas corpus* shall not be suspended"; North Carolina, South Carolina, and Georga voted against the "unless" clause. Subsequently the word "where" was changed by the committee on style to read "when," and the provision became part of the Constitution.

The provision thus adopted was in negative form; it did not affirmatively declare the right of an imprisoned person to the writ. Four of the state ratifying conventions, apparently deeming this inadequate, proposed the inclusion in a bill of rights, to be added to the Constitution, of an affirmative guaranty of the privilege of habeas corpus. The New York convention proposed the following (1 Elliot's *Debates* 328):

> That every person restrained of his liberty is entitled to an inquiry into the lawfulness of such restraint, and to a removal thereof if unlawful; and that such inquiry or removal ought not to be denied or delayed, except when, on account of

public danger, the Congress shall suspend the privilege of the writ of *habeas corpus.*

Virginia (3 *id.* 658), North Carolina (4 *id.* 243), and Rhode Island (1 *id.* 334) suggested the following (with slight variations in punctuation):

> That every freeman restrained of his liberty is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same if unlawful, and that such remedy ought not to be denied or delayed.

However, when the First Congress proposed a bill of rights consisting of twelve amendments to the Constitution, of which ten were later ratified, none of the proposed amendments was concerned with the writ of habeas corpus.

The foregoing clearly indicates, we think, that the framers of the Constitution were concerned merely with assuring the availability of *some* remedy for persons unlawfully detained, and that they had no thought of prescribing the procedural details of that remedy. The evils at which the clause was evidently directed bear this out. Despite the common law decisions and statutes establishing the writ in England, the Crown had on numerous occasions succeeded in frustrating all inquiry into the cause of any remedy for unjust detention that the framers had in mind in prohibiting suspension of the writ.[42]

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[42] For the creation and development of the writ in England, and for examples of its suspension or frustration, see Church, *Habeas Corpus* (2d ed. 1893); Hurd, *Habeas Corpus* (2d ed. 1876); 9 Holdsworth, *History of English Law,* 112 *et seq.*

Although the origins of the writ in England are somewhat obscure, it had by the 17th Century become established as the appropriate process for checking illegal imprisonment by public officials or inferior courts. In *Darnel's Case,* 3 How. St. Tr. 1 (1627), the court held that the command of the King (*per special mandatum regis*) in the form of a warrant of arrest signed by two members of the privy council, was a sufficient answer to the writ, against defense objections that even the privy counsel had to assign a sufficient cause of commitment. Section 5 of the Petition of Right, 3 Car. I, c. 1 (1627) to which the King consented in return for certain financial considerations, reflects the concern which this decision caused; it recited that contrary to the Great Charter and good laws and statutes of the realm, divers of the King's subjects had "of late been imprisoned without any sense" shown, and when they were brought up on habeas corpus, no cause was shown but the special command of the King, yet they were nevertheless remanded to prison. It was therefore prayed that "no freeman, in any such manner as is before-mentioned [shall] be imprisoned or detained." Subsequently an act of 1640, abolishing the Star Chamber, 16 Car. I, c. 10, specifically authorized use of the writ to test the legality

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(1932); 2 Hallam, *History of the Middle Ages,* Chapter 8 (1862); Glass, *Historical Aspects of Habeas Corpus,* 9 St. Johns L. Rev. 55 (1934); Jenks, *The Story of the Habeas Corpus,* 18 L.Q.Rev. 64 (1902); Longsdorf, *Habeas Corpus A Protean Writ and Remedy,* 8 F.R.D. 179.

of commitments by command or warrant of the King or privy council."[43]

The Habeas Corpus Act of 1679, 31 Car. II, c. 2, definitely established the availability of the writ and fixed its procedural aspects for the next 131 years. Examination of the provisions of this Act, which was hailed as a great landmark of liberty, forcefully illustrates the narrow scope of the rights protected by the writ in the 17th and 18th centuries as compared with modern conceptions of it. The Act was available only to persons held on charge of crime (Sec. III).[44] Upon issuance of the writ and the return thereto the prisoner was entitled to be released upon giving appropriate recognizances to appear at the next term at a court where the offense with which he was charged was properly cognizable, unless it appeared that the offense was not bailable (Sec. III). Persons charged with treason or felony "plainly and specially expressed in the warrant of commitment" were not eligible to apply for the writ; they were, however, guaranteed the right to be indicted at the next succeeding session (or the second succeeding session if the Crown's witness could not be ready sooner) or bailed (Sec. VII). "Persons convict or in execution by legal

[43] The colonists were familiar with these events; the arguments in *Darnel's Case* were printed in pamphlet form and circulated in the colonies. Hurd, *Habeas Corpus* (2d ed., 1876), pp. 101-102).

[44] Persons imprisoned for debt were expressly excepted (Sec. VIII).

process" were altogether excluded from the benefits of the Act (Sec. III). Within these limits the Act made important procedural advances. The writ could be issued in term time or vacation by any superior court judge (i.e., the Chancellor, any Justice of King's Bench or Common Pleas, and the barons of the Exchequer) (Sec. III).[45] Times were set forth within which the return was to be made and the writ adjudicated (Sec. III). Any sheriff or other jailer who refused to comply with the writ was subject to punishment (Sec. V). Any judge who unlawfully denied a writ was subject to a large forfeiture to the person aggrieved (Sec. X).

The provisions of this Act were, however, suspended on numerous occasions by act of Parilament which had the effect of making 31 Car. II, c. 2, temporarily inoperative, usually as to a limited class of persons such as those suspected of treason against the King. Thus, the Habeas Corpus Act was suspended because of conspiracies against the King in 1688 (1 Wm. & Mary I, c. 2, 7, 19) and again in 1696 (7 & 8 Wm. III, c. 11). Activities of the Jacobites resulted in suspension in 1714 (1 Geo. I, st.

[45] Previously only the Chancellor and the judges of King's eBnch had had the undoubted right to issue the writ. Hurd, *Habeas Corpus* (2d ed. 1876) 96. And these judges were either unable or unwilling to issue the writ except during the legal term, which lasted about six months of every year. For example, in *Jenkes' Case*, 6 How. St. Tr. 1190, the chancellor refused the writ in vacation to a man committed by the King in council for making a speech advocating the calling of a new Parliament.

2, c. 8, 30), 1722 (9 Geo. I, c. 1), and 1744 (17 Geo. II, c. 6). See *King* v. *Earl of Orrery*, 88 Eng. Rep. 75 (1722)). The American Revolution caused suspension as to persons suspected of treason or piracy. 17 Geo. III, c. 9; 18 *id.*, c. 1; 19 *id.*, c. 1; 20 *id.*, c. 5; 21 *id.*, c. 2; 22 *id.*, c. 1; see 2 *Works of Edmund Burke* 1-42.

Suspension occasionally amounted to bills of attainder and named specific individuals. Thus, the act was suspended as to six named individuals arrested as conspirators in a plot to assasinate William III in 1696. 7 & 8 Wm. III, c. 11. Other statutes authorized later rulers to continue the detention. 8 Wm. III, c. 5; 9 Wm. III, c. 4; 10 & 11 Wm. III, c. 13; 1 Ann., st. 1, c. 29; 1 Geo. I, st. 2, c. 7; 1 Geo. II, st. 1, c. 4; *Case Against Bernardi*, 13 How. St. Tr. 759.[46]

The statute 17 Geo. III, c. 9 (1777), *supra*, will serve as an example of a suspension act. It provided:

> * * * That all and every person or persons who have been, or shall hereafter be seized or taken in the act of high treason committed in any of his Majesty's colonies or plantations in *America*, or on the high seas, or in the act of piracy, or who are or shall be charged with or suspected of the crime of high treason, * * * or of piracy, * * * may be thereupon secured and detained in safe custody, without bail or mainprize, until the first day of *January*, one thousand seven hundred and seventy-eight; and that

[46] The last survivor of the six died in Newgate in 1736. *Looking Back*, 91 Sol. J. 515 (1947).

> no judge or justice of the peace shall bail or try any such person or persons without order from his Majesty's most honorable privy council * * *, any law, statute, or usage, to the contrary in any-wise notwithstanding.

This suspension was extended annually until January 1, 1883, see p. 68, *supra*. In other words, suspension in England was a legislative enactment which caused the Habeas Corpus Act to cease to operate, allowing confinement without bail, indictment, or other judicial process.

A similar suspension occurred in Massachusetts shortly before the Constitutional Convention. During Shay's Rebellion in 1786-1787, the Massachusetts legislature suspended the privilege of the writ. The statute provided that "any person or persons whatsoever, whom the Governor and Council, shall deem the safety of the Commonwealth requires" would be "continued in imprisonment, without Bail or Mainprize, until he shall be discharged therefrom by order of the Governor, or of the General Court." Mass. Laws 1786, c. 41.[47]

In short, as the debates in the Convention indicate (see *supra*, pp. 62-64), the concern of the framers was over the power, which had been repeatedly exercised in England, to effect a total suspension

[47] For general discussions of the writ in the colonies see 2 Channing, *History of the United States* 221, n. 1 (1937); Goebel, *Law Enforcement in Colonial New York* 260, 288, 502-506 (1944); Hurd, *Habeas Corpus* 95-104 (2d ed. 1876); Glass, *Historical Aspects of Habeas Corpus*, 9 St. Johns L. Rev. 55, 63-64 (1934).

of the privilege of the writ. The purpose of the clause was to provide that such a total suspension could occur only in time of war or rebellion and then only if the public safety required it.[48]

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[48] This power to suspend the privilege in time of war or rebellion has several times been exercised or sought to be exercised. In 1807, after the exposure of the Burr conspiracy, Jefferson proposed a suspension of the writ for three months in cases of treason or other high crime or misdemeanor. The measure passed the Senate with one dissent but was defeated in the House. See 16 *Annals of Congress*, 44, 402 *et seq.*, 531-535; 3 Beveridge, *Life of John Marshall*, 343-348. Lincoln, without legislative authority, suspended the writ or authorized its suspension on several occasions early in the Civil War. See 6 Richardson, *Messages and Papers of the Presidents*, 16-19, 24-25, 98-99; *Ex Parte Merryman*, Fed. Cas. No. 9,487 (C.C.D. Md.). In 1863 Congress authorized suspension of the writ; the Act (Act of March 3, 1863, 12 Stat. 755) provided that:

"* * * during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any persons detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue."

The privilege of the writ was also suspended in the Confederacy. *In re Cain*, 60 N.C. 525, 2 Winston 141; *State* v. *Sparks*, 27 Tex 705.

[Footnote continued on page 11a]

Congress has repeatedly acted on the assumption that it has power to regulate procedure in habeas corpus, to define the grounds for issuance of the writ, and to prescribe the jurisdiction of federal courts to issue it. The Judiciary Act of 1789, Sec. 14, 1 Stat. 81, contained the following brief provision, intended to provide "efficient means by which this great constitutional privilege should receive life and activity" (*Ex Parte Bollman*, 4 Cranch 75, 95):

> *And be it further enacted*, That all the beforementioned courts of the United States, shall have the power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some

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[48] [Continued]

The Act of April 20, 1871, gave the President the power to suspend the writ in an attempt to combat the Ku Klux Klan. 17 Stat. 13. For a time in the fall of 1871, the privilege was denied in nine South Carolina counties. 7 Richardson, *Messages and Papers of the Presidents*, 136-138, 150-151. The writ was suspended in Cavite and Batangas in 1905. *Fisher* v. *Baker*, 203 U.S. 174. It was suspended in Hawaii in 1941. *Duncan* v. *Kahanamoku*, 327 U.S. 304.

court of the same, or are necessary to be brought into court to testify.

This provision clearly prohibited inquiry into the cause of detention of prisoners confined under state process. *Ex parte Dorr*, 3 How. 103. The availability of the writ was extended in 1833 to federal officers in state custody for acts in carrying out federal laws (Act of March 2, 1833, 4 Stat. 632, 634; see *In re Neagle*, 135 U.S. 1), and in 1842 to certain foreign nationals held by state officers (Act of August 28, 1842, 5 Stat. 539).

In 1867, to facilitate enforcement of the Reconstruction Acts (2 Warren, *The Supreme Court in United States History* (rev. ed.), 464), the federal writ was drastically extended to "all cases where any person may be restrained of his or her liberty in violation of the constitution, or any treaty or law of the United States." Act of February 5, 1867, 14 Stat. 385. In this Act Congress for the first time made detailed regulations of the procedure on all applications for the writ. By the Act of March 27, 1868, 15 Stat. 44, Congress temporarily withdrew the jurisdiction of the Supreme Court to hear appeals from denials of the writ. See *Ex parte McCardle*, 7 Wall. 506. The provisions of the 1867 Act were codified in the Revised Statutes of 1874 and 1878. This statutory framework remained substantially unchanged (with the exception of some modifications in the appellate procedure) (see 28 U.S.C. (1946 ed.) 451-466), until the revision and enactment of Title 28 in 1948.

The power of Congress thus to prescribe the attributes of the writ has never been doubted. The principle was laid down by Chief Justice Marshall in *Ex parte Bollman*, 4 Cranch 75, 94, that "the power to award the writ by any of the courts of the United States, must be given by written law"—i.e., by statute.[49] This holding has been adhered to without exception. *E.g.*, *Ex parte Dorr*, 3 How. 103; *Ex parte McCardle*, 7 Wall. 506; *Whitney* v. *Dick*, 202 U.S. 132; *Ahrens* v. *Clark*, 335 U.S. 188; *Dorr* v. *Burford*, 339 U.S. 200, 210-214. Similarly, the power of Congress to regulate habeas corpus procedure has never been questioned. E.g., *Frank* v. *Mangum*, 237 U.S. 309, 331; *Johnson* v. *Zerbst*, 304 U.S. 458; *Walker* v. *Johnston*, 312 U.S. 274. As this Court said of the issue before it in *Walker* v. *Johnston*, *supra*, 312 U.S. at 285:

> It is not a question of what the ancient practice was at common law or what the practice was prior to 1867 when the statute from which R. S. 761 is derived was adopted by Congress. The question is what the statute requires.

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[49] Marshall excepted from this statement the inherent powers of courts "over their own officers, or to protect themselves, and their members, from being disturbed in the exercise of their functions."

B. IN THE EXERCISE OF THAT POWER CONGRESS COULD, IN THE CASE OF CONVICTED PERSONS, VALIDLY SUBSTITUTE FOR HABEAS CORPUS A REMEDY IN THE SENTENCING COURT

Any suggestion that the Constitution imposed an inflexible procedure on habeas corpus, or adopted the act of 31 Car. II, c. 2, is not only textually and historically unsound, but also self-defeating as applied to the remedies available to attack a judgment of conviction. For it is clear that at the time of the Constitution habeas corpus was never conceived of as a remedy available to persons convicted by a court of general criminal jurisdiction. The English Act of 1679, 31 Car. II, c. 2, which was in force in England in 1789, expressly excepted "persons convict or in execution by legal process" from those eligible to apply for the writ. (Sec. III; see p. 67, *supra.*) Similarly at common law the rule that a convicted person did not have the privilege of the writ had been applied. See Dicey, *Law of the Constitution*, 217-218.

State legislation in the United States at about the time of the Convention was generally patterned on the English Act. See 2 Kent, *Commentaries* 28. Typically the state acts likewise expressly excluded convicted persons from their benefits. See Maryland, Act of Jan. 6, 1810, ch. cxxv ("not being convict or in execution by legal process"); Massachusetts, Laws, 1784, c. 72 ("persons convict or in execution by legal process"); New Hampshire, Act of June 26, 1815, c. 45 ("unless the complainant be convict, or in execution by legal process, criminal or civil"); New

Jersey, Act of Mar. 11, 1795, c. dxxxvi ("other than persons convict, or in execution by legal process"); New York, Laws of 1801, c. 65 ("other than persons convict or in execution by legal process").[50]

In the federal courts, under acts of Congress prior to that of 1867, it was the settled rule that a showing that the applicant was held pursuant to a conviction by a court of general criminal jurisdiction ended the inquiry. Once the jurisdiction of the court over criminal matters was shown, its decision was deemed *res judicata* as to all matters affecting the validity of the conviction and sentence. *Ex parte Watkins*, 3 Pet. 193; *Ex parte Watkins*, 7 Pet. 568, 571; see *Ex parte Yerger*, 8 Wall. 85, 101; *Frank* v. *Mangum*, 237 U.S. 309, 330-331. Although the Court is not faced with any such question, the fact that the writ of habeas corpus as it existed when the Constitution was adopted did not extend to convicted criminals indicates that even the complete abolition of the right to the writ for such persons would not be a suspension in contravention of Article I, clause 9.

The Act of 1867, 14 Stat. 385, was, however, the basis for drastic expansion in the scope of inquiry on the writ. That Act contained two provisions of primary significance for present purposes. It provided that federal courts and judges

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[50] As to Georgia, see note 41, p. 62, *supra*, and *State* v. *De Las Maurignos*, T.U.P. Charlton Rep. 24 (1805) which states that the "habeas corpus act, 31 Carolus 2. chap. 2, sec. 7, * * * is adopted by our constitution and our laws * * *."

> in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or any treaty or law of the United States.

In addition, it made a major change in habeas corpus procedure by providing that "the petitioner may deny any of the material facts set forth in the return, or may allege any fact * * *" and that the court or judge "shall proceed in a summary way to determine the facts of the case, by hearing testimony and the arguments of the parties interested." This Court described the change made by the latter provision in *Frank* v. *Mangum, supra,* at 330-331:

> The effect is to substitute for the bare legal review that seems to have been the limit of judicial authority under the common-law practice, and under the act of 31 Car. II, c. 2, a more searching investigation, in which the applicant is put upon his oath to set forth the truth of the matter respecting the causes of his detention, and the court, upon determining the actual facts, is to "dispose of the party as law and justice require."

These provisions of the 1867 Act, together with a growing concern of this Court for the procedural guaranties of due process in criminal cases, became the basis for a series of holdings that, where denial of constitutional right was asserted, judgments of conviction by state and federal courts could be reexamined on habeas corpus, and evidence outside

the original criminal record could be taken on the question whether constitutional rights had been violated. *Moore* v. *Dempsey,* 261 U.S. 86; *Mooney* v. *Holohan,* 294 U.S. 103; *Johnson* v. *Zerbst,* 304 U.S. 458; *Walker* v. *Johnston,* 312 U.S. 275; *Waley* v. *Johnston,* 316 U.S. 101; *Adams* v. *United States ex rel. McCann,* 317 U.S. 269; *House* v. *Mayo,* 324 U.S. 42; *Von Moltke* v. *Gillies,* 332 U.S. 708; *Price* v. *Johnston,* 334 U.S. 266.

Thus the decisions on which respondent necessarily relies in his claim for relief from his criminal conviction stem, not from any command of Art. I, Sec. 9 of the Constitution, but from the jurisdiction conferred and procedure created by the 1867 Act. See *Johnson* v. *Zerbst, supra,* at 466; *Walker* v. *Johnston, supra,* at 285-6. To the extent that they may have constitutional basis it would rest in an implication from the due process clause that where a conviction has been rendered in violation of constitutional right some corrective process must be supplied. Thus in *Johnson* v. *Zerbst, supra,* at 467, this Court deemed it necessary that the writ should issue because

> no legal procedural remedy is available to grant relief for a violation of constitutional rights, unless the courts protect petitioner's rights by *habeas corpus.*

And in *Waley* v. *Johnston, supra,* at 104-105, this Court emphasized that

> use of the writ in the federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judg-

> ment of conviction is void for want of jurisdiction of the trial court to render it. It extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused, *and where the writ is the only effective means of preserving his rights.* [Emphasis added.]

In short, habeas corpus developed as a remedy in these cases because the language of the 1867 Act permitted it and because, in the absence of any other remedy, it appeared to b the only means of preserving constitutional rights. We think there can be no doubt of the power of Congress to replace habeas corpus in this area with a substitute remedy of equivalent scope in the sentencing court. The reasons which impelled Congress to the change are clearly set forth in the materials already quoted from the Judicial Conference. See *supra*, pp. 16-31. And we think the discussion in Part I of this Brief amply shows that the new remedy affords an adequate means of redressing any violation of constitutional right.

This Court dealt with a similar question in cases coming from state courts. In various types of situations a number of states, while denying relief in habeas corpus, permit a prisoner to attack his conviction in the sentencing court by writ of error or proceeding *coram nobis*.

This Court has invariably stated or assumed that such a remedy in the sentencing court, if clearly available, satisfies a state's obligation to provide an

adequate corrective process for any denial of constitutional right occurring in a criminal trial. E.g., *New York ex rel. Whitman* v. *Wilson*, 318 U.S. 688; *Ex parte Hawk*, 321 U.S. 114; *Marino* v. *Ragen*, 332 U.S. 561; *Young* v. *Ragen*, 337 U. S. 235; *Darr* v. *Burford*, 339 U. S. 200. It has recognized that "of course [a state] may choose the procedure it deems appropriate for the vindication of federal rights." *Young* v. *Ragen*, *supra*, 337 U. S. at 238. We believe it was clearly open to Congress to make a similar choice with respect to federal proceedings, and to avoid the unseemly spectace of a trial by one district court of the validity of proceedings in another district court (*supra*, p. 25), by substituting for habeas corpus a remedy of equivalent scope in the sentencing court.

There can be no doubt that even within the area to which the writ traditionally applies, Congress has complete power to specify the court in which relief from a conviction can be obtained. This is clearly established by *Ahrens* v. *Clark*, 335 U.S. 188, in which this Court construed the habeas corpus statutes as confining jurisdiction to issue the writ for that purpose to the court within whose district the prisoner is held. Although there was strenuous dissent to a construction of the statute which, in the views of the minority, resulted in a "serious contraction of the availability of the writ" (335 U.S., at 194), no question was raised by any member of the court as to the power of Congress to impose such a jurisdictional limitation. See also

Whitney v. *Dick*, 202 U.S. 132, construing the statutes as denying jurisdiction to circuit courts of appeals to issue writs of habeas corpus except in aid of an existing jurisdiction. If Congress can confine the issuance of the writ to a single court, we see no reason why it could not choose the sentencing court rather than the court of the district within which the prisoner is confined. *A fortiori*, in dealing with an area in which habeas corpus was not available at the time the Constitution was adopted, Congress had power to substitute for habeas corpus a remedy to substitute for habeas corpus a remedy of equivalent scope in the sentencing court.[51]

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[51] In other contexts, this Court has sustained legislation confining to a single tribunal the opportunity to assert constitutional issues. E.g., *Lockerty* v. *Phillips*, 319 U.S. 182, 186-8; *Yakus* v. *United States*, 321 U.S. 414, 443-8.

ADDENDUM B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. *Constitutional Provisions*

Article I, Section 8 of the Constitution provides in pertinent part:

> The Congress shall have Power * * *
>
> * * * *
>
> [cl. 9] To constitute Tribunals inferior to the supreme Court;
>
> * * * *
>
> [cl. 17] To exercise exclusive Legislation in all Cases whatsover, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States * * *.

Article I, Section 9, cl. 2 provides:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Article III, Section 1 of the Constitution provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as th eCongress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offies during good Behavior, and shall, at stated Times, receive for their Services, a Com-

pensation, which not be diminished during their Continuance in Office.

Article III, Section 2 of the Constitution provides in pertinent part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority * * *.

The Fifth Amendment to the Constitution provides in pertinent part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

2. *United States Code Provisions*

28 U.S.C. 2241 provides in pertinent part:

§ 2241. Power to grant writ.

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. * * *

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is

committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an ait done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validty and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

28 U.S.C. 2243 provides in pertinent part:

§ 2243. Issuance of writ; return; hearing; decision.

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

* * * *

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

* * * *

28 U.S.C. 2254 provides in pertinent part:

§ 2254. State custody; remedies in State courts.

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the ex-

istence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a Federal court by any application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his

constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

(e) If the applicant challenges the sufficiency of the evidence adduced in sucs State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

* * * *

28 U.S.C. 2255 provides:

§ 2255. Federal custody; remedies on motion attacking sentence.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also

appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

3. *District of Columbia Code Provision*

23 D.C. Code 110 provides:

(a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Cloumbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

(b) A motion for such relief may be made at any time.

(c) Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that (1) the judgment was rendered without jurisdiction, (2) the sentence imposed was not authorized by law or is otherwise open to collateral attack, (3) there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner, resentence him,

grant a new trial, or correct the sentence, as may appear appropriate.

(d) A court may entertain and determine the motion without requiring the production of the prisoner at the hearing.

(e) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(f) An appeal may be taken to the District of Columbia Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(g) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

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